

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

75-7629

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**United States Court of Appeals  
For the Second Circuit**

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TUBECO, INC.,

*Plaintiff-Appellant,*

v.

CRIPPEN PIPE FABRICATION CORPORATION  
and HENRY O. CRIPPEN,

*Defendants-Appellees.*

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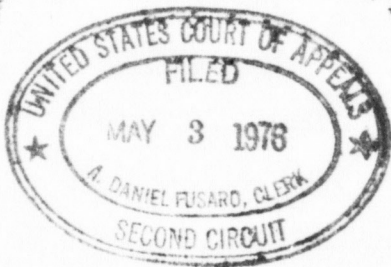
*On Appeal From The United States District  
Court For The Eastern District Of New York*

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**Joint Appendix**

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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

2-13-73 Complaint

2-27-73 Summons (returned and filed not served)

2-27-73 Order of Clerk Permitting Personal Service

3-6-73 Additional Summons filed/executed

3-6-73 Plaintiff's Interrogatories to Defendants

3-12-73 Order extending time to answer the Complaint

4-6-73 Plaintiff's Request for Production of Documents

4-27-73 Answer

4-30-73 Defendants' objections to Plaintiff's Interrogatories

4-30-73 Notice of Motion by Defendants to vacate Plaintiff's Notice of Deposition and to limit examination with a supporting Affidavit of Robert E. Paulson and a Memorandum of Law

5-7-73 Order that Defendants be given until May 8, 1973 to file a Motion to Dismiss staying Plaintiff's Notice of Deposition until after such Motion and limiting examination to jurisdiction

5-8-73 Notice of Motion by Defendant to dismiss with supporting Affidavits of Henry Crippen, Bruce A. Wallace and Norman Stewart and a Memorandum of Law

5-15-73 Defendants' Statement regarding Plaintiff's Request for Production of Documents

9-24-73 Letter from Robert E. Paulson to the Court

9-24-73 Affidavits of Allan B. Wesler, Arthur A. Green, Louis Webber, Lyber Katz and Roy C. Hopgood in opposition to Defendants' Motion to Dismiss

9-24-73 Plaintiff's Memorandum in opposition to Defendants' Motion to Dismiss

10-1-73 Defendants' Notice of Deposition of Sydney Albert, Allan B. Wesler, Arthur A. Green, Louis Webber, Lyber Katz, J. Weissman and Roy C. Hopgood

1-23-74 Letter of Arthur M. Lieberman

3-8-74 Defendants' reply to Plaintiff's opposition to Defendants' Motion to Dismiss

3-8-74 Affidavit of Howard C. Reed

3-8-74 Supplementary Affidavit of Henry Crippen with exhibits

3-15-75 Order that neither party shall take further discovery

10-23-75 Memorandum and Order directing entry of judgment in favor of defendants and against Plaintiff and dismissing the Complaint

10-28-75 Judgment that Plaintiff take nothing and that the Complaint be dismissed

11-12-75 Notice of Appeal

11-21-75 Certified copy of Order that Record on Appeal be filed on or before December 2, 1975

11-21-75 Order for the substitution of attorneys

12-1-75 Plaintiff's Reply Memorandum in opposition to Defendants' Motion to Dismiss and a Supplemental Affidavit of Lyber Katz

12-1-75 Deposition of Henry O. Crippen, May 15, 1973, pages 1-188

12-1-75 Deposition of Henry O. Crippen, May 16, 1973, pages 189-338

12-1-75 Deposition of Henry O. Crippen, July 2, 1973, pages 340-532

3-26-76 Deposition of Arthur Green, November 8, 1973, pages 1-56



3-26-76 Deposition of Louis Webber, November 8, 1973,  
pages 1-69

3-26-76 Deposition of Lyber Katz, October 23, 1973,  
pages 1-196

3-26-76 Deposition of Allan Wesler, October 16, 1973,  
pages 1-414

3-26-76 Deposition of Lyber Katz, October 29, 1974,  
pages 197-402

3-26-76 Stipulation Under Rule 10

3-26-76 Copies of Exhibits marked during deposition  
of Allan B. Wesler, Lyber Katz, Arthur Green  
and Louis Webber

3-26-76 Clerk's Certificate



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X  
TUBECO, INC., :  
 :  
 Plaintiff, :  
 :  
 v. :      Civil :  
 :  
 CRIPPEN PIPE FABRICATION CORPORATION, :  
 and HENRY O. CRIPPEN, :  
 :  
 Defendants. :  
-----X

C O M P L A I N T

Plaintiff Tubeco, Inc. (herein "Tubeco"), for its complaint against defendants Crippen Pipe Fabrication Corporation (herein "Crippen Corp.") and Henry O. Crippen (herein "Crippen") alleges, as follows:

Jurisdiction

1. Plaintiff Tubeco is a corporation organized under the laws of the State of New York, having its principal offices and place of business in Brooklyn, County of Kings, State of New York.

2. Defendant Crippen Corp. is a corporation organized under the laws of the State of New York having its principal offices and place of business in

Brooklyn, County of Kings, State of New York. Defendant Crippen is President of Crippen Corp. and on information and belief resides at 601 East 167th Street in Bronx County, New York.

3. This suit arises out of an actual controversy between the parties as to the validity and scope of United States Letters Patent No. 3,456,468 in the name of defendant Crippen, and as to related acts of unfair competition by one or both defendants. Jurisdiction is conferred on this Court pursuant to the Declaratory Judgment statutes (28 U.S.C. 2201, 2202) providing that in a case of actual controversy within its jurisdiction, any Court of the United States may declare the rights and legal relations of interested parties; upon the Patent Laws of the United States (28 U.S.C. 1338(a)) granting the District Courts original jurisdiction of any civil action arising under any act of Congress relating to patents; upon pendant jurisdiction (28 U.S.C. 1338(b)) giving the District Courts original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the Patent Laws; upon the Federal Questions statute (28 U.S.C. 1331(a)) granting the District Courts original jurisdiction of all civil actions where the matter in controversy exceeds \$10,000.00 and arises under the laws of the United States; and upon the Lanham Act (15 U.S.C. 1125(a)) granting the District

Courts jurisdiction of any civil action asserting a claim involving any false description or representation in connection with goods or services in commerce. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.

Plaintiff's Commercial Business

4. Since long prior to the defendants' acts of which complaint is made herein, plaintiff had invested heavily in, and has been conducting, a business of pipe fabrication, specializing inter alia in the precision custom bending of steel pipe larger than six inches in diameter, as used for example in chemical plants, power plants, refineries, and the like. Plaintiff's said business is of interstate proportions, and plaintiff prides itself on the quality of its services and products, to a customer clientele which includes the best known and respected large corporations in this country. Plaintiff's customers receive plaintiff's save-harmless assurances, against liability inter alia for claims of patent infringement.

5. For more than a year prior to any of the defendants' acts of which complaint is made herein, one of plaintiff's established commercial techniques for bending pipe of at least six-inches diameter comprised the following steps:

- (a) Heating the pipe to a temperature at which it is bendable;
- (b) Anchoring one end of the pipe;



- (c) Bending the pipe in a horizontal plane, to the extent of the desired number of degrees;
- (d) The bend 's around the curvature faces of a continuous arced forming die which at the bending point extends substantially half way around the pipe circumference;
- (e) The radius of the die-formed bending arc is equal to the radius of the bend to be made and is spaced from the bending floor; and
- (f) The pipe being bent rests on riding supports which support the pipe at an elevation which is spaced from the bending floor at substantially the same distance as the bending die is spaced from the same floor.

For a First Cause of Action

6. Defendant Crippen was, for the years 1954 to 1966, an employee of plaintiff, assigned to duties pertaining to plaintiff's hot-pipe bending apparatus and techniques and had knowledge of plaintiff's use of the technique recited in Paragraph 5 above.

7. Upon information and belief, the said Crippen United States Letters Patent No. 3,456,468 is invalid and was not duly or legally issued or, in the alternative is not enforceable, for one or more of the following reasons:

(a) The named patentee did not himself invent the patented subject matter, as required by 35 U.S.C. 102(f).

(b) Lack of patentable invention, as required by 35 U.S.C. 102 and 103.

(c) By reason of the alleged inventor's unfair acts during prosecution of said patent, in failing to fully and completely disclose to the Patent Office his knowledge of the relevant state of the art.

8. Defendants, or one of them, assert and have asserted and announced to plaintiff and others, including plaintiff's customers, a position of exclusivity, ownership and high value (of at least \$100,000.00) as to the subject matter and/or claims of Crippen United States Letters Patent No. 3,456,468, entitled, "Hot Pipe Bending Apparatus and Method".

9. Defendants, or one of them, have asserted to plaintiff that the plaintiff has used or can use the method or apparatus, as claimed in said Crippen United States Letters Patent No. 3,456,468, only by payment of suitable tribute to defendants, or one of them.

10. On information and belief, defendants, or one of them, have asserted to plaintiff's customers either that plaintiff's products and services infringe the claimed invention of said patent, or that only by purchase of the goods and services of defendants can infringement of said patent be avoided.

11. One or more of the claims of said Crippen United States Letters Patent No. 3,456,468 is directed to subject matter known to Crippen to have been in commercial use by plaintiff since more than one year prior to the filing date of the application which matured into said patent.

12. Defendants have been formally notified, by plaintiff as to the plaintiff's prior use, stated in Paragraph 5 above; copy of plaintiff's letter of notice, dated January 17, 1973, is annexed, marked Exhibit A. Defendants have neither denied nor taken exception to any of the statements contained in said letter.

13. The claims of said Crippen United States Letters Patent No. 3,456,468 are not infringed by plaintiff's manufacture or sale of its hot-bent pipe or machines, nor are they infringed by plaintiff's customers who place orders for plaintiff's hot-pipe bending services.

14. Defendants, or one of them, have competed unfairly with plaintiff by using a patent, which they know or have reason to know is partly or wholly invalid, as a material element in their solicitation of hot-pipe bending business from others, including plaintiff's customers.

15. Defendants, or one of them, have competed unfairly with plaintiff by using a patent, which they know or have reason to know is partly or wholly invalid, as a material



representation and suggestion in their solicitation of financing from investors and banks, to create a hot-pipe bending business which has had the effect of or tended to damage plaintiff's business.

16. The aforesaid acts of defendants, or one of them, have injured plaintiff.

For a Second Cause of Action

17. The allegations of Paragraphs 1 to 16 are realleged.

18. Upon information and belief, defendant Crippen Corp. has used said Crippen United States Letters Patent No. 3,456,468, without disclaimer, as a false and material description or representation, with knowledge of its falsity, in the solicitation and sale of goods and/or services in interstate commerce, within the meaning of 15 U.S.C. 1125(a).

19. The said false description or representation has damaged plaintiff and, if unrestrained, is likely to cause further damage to plaintiff. On information and belief, such damage is attributable to the false suggestion of high value and of validity and exclusivity with defendant Crippen Corp., all as to the invalid claimed subject matter of said Crippen United States Letters Patent No. 3,456,468, thereby causing customers to believe that to purchase the goods and services of plaintiff would be to incur at least the added cost of a direct or indirect royalty obligation to defendants, or one of them.

20. To plaintiff's best knowledge and belief, the technique set forth in Paragraph 5 above was uniquely plaintiff's and was thus generally recognized in the trade, since prior to defendants' acts of which complaint is made herein. The Crippen patent use recited in Paragraph 17 falsely suggests exclusivity with defendants and thus is also a false designation of origin, within the meaning of 15 U.S.C. 1125(a), and plaintiff has been or is likely to be damaged by the use of such false designation of origin.

WHEREFORE, plaintiff prays:

A. For a judgment declaring that said Crippen United States Letters Patent No. 3,456,468 is invalid, unenforceable, and not infringed by plaintiff or by customers who purchase plaintiff's goods or services;

B. For a judgment that defendants, or one of them, have used said Crippen United States Letters Patent No. 3,456,468 to compete unfairly with plaintiff;

C. For a judgment that defendant Crippen Corp. has used said Crippen United States Letters Patent No. 3,456,468 as a false description or representation, and a false designation of origin, within the meaning of 15 U.S.C. 1125(a).

D. For an accounting of the damages by reason of the aforesaid acts of unfair competition and false description or representation; and

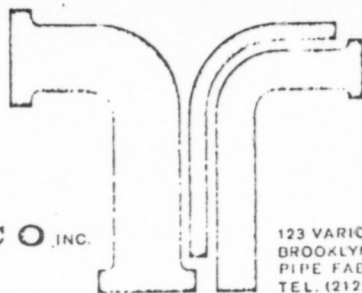
E. For such further relief as may be just and proper.

New York, N.Y.  
February 13 , 1973

SANDOE, HOPGOOD AND CALIMAFDE  
By [Signature]  
A member of the firm  
Attorneys for Plaintiff  
60 East 42nd Street  
New York, New York 10017  
212-986-2480



TUBECO INC.



123 VARICK AVENUE  
BROOKLYN, N.Y. 11237  
PIPE FABRICATING  
TEL. (212) 386-0700  
WU TELEX NO. 129203

Registered Mail  
(Return Receipt Requested)

\* January 17, 1973

Mr. Henry C. Crippen, President  
Crippen Pipe Fabrication Corporation  
Building 269  
Brooklyn Navy Yard  
Brooklyn, N.Y. 11205

Dear Mr. Crippen:

The purpose of this letter is to bring to your attention a serious matter which constitutes unfair competition against our company.

We have learned from persons in the industry that your patent has been used by you to induce prospective customers to purchase your services and machines. It was even suggested that our company may be infringing your patent. Accordingly, we have caused our attorneys to investigate the file history of your patent and to determine the breadth of patent coverage you have acquired. We learned to our astonishment that at least one claim in your patent describes the process which had been used in our plant for many years prior to your patent application and of which you had personal knowledge. We also learned that you withheld from the Patent Office information known to you regarding our processes and techniques which should have been disclosed to it for consideration in evaluating the merits of your patent disclosure. We are advised by counsel that the purposeful withholding of information from the Patent Office which is material to a determination of patentability constitutes fraud on the Patent Office. Moreover, Claim 11 in your patent is a verbal description of the process which had been in use prior to your employment by Tubeco and which process was practiced during your employment here. Your claim of inventorship to that process is, therefore, obviously false.

According to our lawyers, the use of your fraudulently obtained patent, for your benefit and, therefore, to our detriment is "unfair competition" for which we have legal redress in a court of law. We therefore demand that you disclaim your patent forthwith.

Will you please advise us by February 1, 1973 whether or not you propose to respond to our demand. If we do not hear from you by February 1, 1973, we shall proceed accordingly.

Very truly yours,  
TUBECO, INC.

J. Weichmann  
Controller

cc: J. Calimafde  
S. Corbin  
L. Lalo

12

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

----- X  
TUBECO, INC., :  
 :  
Plaintiff, : Civil Action No.  
 : 73 C 203  
v. :  
 : (Judge Neaher)  
CRIPPEN PIPE FABRICATION CORPORATION :  
and HENRY O. CRIPPEN, :  
 :  
Defendants. :  
----- X

A N S W E R

Defendants, CRIPPEN PIPE FABRICATION CORPORATION and  
HENRY O. CRIPPEN for their Answer to the Complaint in the above-  
entitled action, aver as follows:

1. Admit that plaintiff has offices and a place of  
business in Brooklyn, New York, but that they are without know-  
ledge or information sufficient to form a belief as to the  
truth of the remaining allegations of Paragraph 1 of the Complaint  
and therefore deny the same.

2. Admit that CRIPPEN PIPE FABRICATION CORPORATION is  
a corporation having principal offices and a place of business  
in Brooklyn, Kings County, New York and that HENRY O. CRIPPEN  
is President of said corporation but deny the remaining allega-  
tions of Paragraph 2 of the Complaint, and further answering  
Paragraph 2 of the Complaint state that defendant CRIPPEN PIPE

FABRICATION CORPORATION is a corporation of the State of Delaware whose address is Building 269, Brooklyn Navy Yard, Brooklyn, New York 11205, and that defendant HENRY O. CRIPPEN resides at 1700 Grand Concourse, Bronx County, New York 10457.

3. Deny each and every allegation of Paragraph 3 of the Complaint and specifically deny that this Court has subject matter jurisdiction under any of the cited statutes and further specifically deny that any cause of action exists against any of the defendants.

4. Admit that plaintiff has been in the business of pipe fabrication for a number of years past, but that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 4 of the Complaint and therefore deny the same.

5. That the allegations of Paragraph 5 of the Complaint are so vague and ambiguous as to prevent the formation of a belief as to the truth thereof and therefore deny the same; and further, to the extent the allegations of Paragraph 5 of the Complaint may be understood, that they are without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore deny the same.

6. Admit that defendant HENRY O. CRIPPEN was employed by plaintiff for the years 1954 to 1966 and had knowledge of plaintiff's hot-pipe bending apparatus and techniques during



that period of time but deny the remaining allegations of Paragraph 6 of the Complaint.

7. Deny each and every allegation of Paragraph 7 of the Complaint.

8. Admit that CRIPPEN PIPE FABRICATION CORPORATION is the owner by assignment of United States Letters Patent No. 3,456,468, entitled "Hot Pipe Bending Apparatus And Method" issued to HENRY O. CRIPPEN and that defendants consider both the subject matter and claims of said patent to represent a valuable contribution to the art of hot pipe bending but deny the remaining allegations of Paragraph 8 of the Complaint.

9. Deny each and every allegation of Paragraph 9 of the Complaint.

10. Deny each and every allegation of Paragraph 10 of the Complaint.

11. Deny each and every allegation of Paragraph 11 of the Complaint.

12. Admit the receipt of the letter dated January 17, 1973, annexed to the Complaint as Exhibit A, but deny each and every remaining allegation of Paragraph 12 of the Complaint.

13. That they are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint and therefore deny the same,

and specifically deny that defendants, or any one of them, has ever asserted a charge of infringement of United States Letters Patent No. 3,456,468 against plaintiff or a customer of plaintiff.

14. Deny each and every allegation of Paragraph 14 of the Complaint.

15. Deny each and every allegation of Paragraph 15 of the Complaint.

16. Deny each and every allegation of Paragraph 16 of the Complaint.

17. Admit, deny or otherwise answer the allegations of Paragraph 17 of the Complaint in the same manner as in the preceding Paragraphs 1-16, respectively.

18. Deny each and every allegation of Paragraph 18 of the Complaint.

19. Deny each and every allegation of Paragraph 19 of the Complaint.

20. Deny each and every allegation of Paragraph 20 of the Complaint.

Affirmative Defenses

And as Further and Affirmative Defenses, defendants CRIPPEN PIPE FABRICATION CORPORATION and HENRY O. CRIPPEN aver as follows:

21. That this Court lacks jurisdiction over the subject matter of the First Cause of Action stated in the Complaint because of a lack of a justiciable controversy with respect to United States Letters Patent No. 3,456,468.

22. That the First Cause of Action stated in the Complaint fails to state a claim upon which relief can be granted.

23. That this Court lacks jurisdiction over the subject matter of the Second Cause of Action stated in the Complaint because of a lack of a justiciable controversy with respect to United States Letters Patent No. 3,456,468.

24. That the Second Cause of Action stated in the Complaint fails to state a claim upon which relief can be granted.

Defendants, and each of them, reserve the right to seek leave to amend and/or supplement this Answer to assert, when ascertained, any claims against plaintiff which defendants may have or later acquire or become known from discovery proceedings.

WHEREFORE defendants CRIPPEN PIPE FABRICATION CORPORATION and HENRY O. CRIPPEN pray:

A. That the First Cause of Action stated in the Complaint be dismissed for lack of jurisdiction over the subject matter thereof.



B. That the First Cause of Action stated in the Complaint be dismissed for failure to state a claim against defendants upon which relief can be granted.

C. That the Second Cause of Action stated in the Complaint be dismissed for lack of jurisdiction over the subject matter thereof.

D. That the Second Cause of Action stated in the Complaint be dismissed for failure to state a claim against defendants upon which relief can be granted.

E. That the Complaint be dismissed in its entirety with prejudice.

F. That costs and reasonable attorneys' fees be awarded to defendants.

G. That the Court grant defendants such other and further relief as to the Court may seem just and proper.

MORGAN, FINNEGAN, DURHAM & PINE

By \_\_\_\_\_  
John D. Foley  
Attorneys for Defendants

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420 Lexington Avenue  
New York, New York 10017  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X  
TUBECO, INC., :  
 :  
Plaintiff, : Civil Action No.  
 : 73 C 203  
v. :  
 : (Judge Neaher)  
CRIPPEN PIPE FABRICATION CORPORATION :  
and HENRY O. CRIPPEN, :  
 :  
Defendants. :  
-----X

NOTICE OF MOTION

TO:

ROY C. HOPGOOD, ESQ.  
SANDOE, HOPGOOD & CALIMAFDE  
60 East 42nd Street  
New York, New York 10017

PLEASE TAKE NOTICE that on Friday, May 18, 1973, at 10:00 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Edward R. Neaher, Judge of this Court, in Courtroom No. 9, in the United States Courthouse, 225 Washington Street, Brooklyn, New York, or before such other Judge as may be sitting in his place and stead, and shall then and there submit to the Court the accompanying Motion To Dismiss Pursuant to F.R.C.P. Rule 12(b)(1) and (6) For Lack of Subject



Matter Jurisdiction And Failure To State A Claim Upon Which Relief Can Be Granted, and shall request the Court to grant said Motion.

MORGAN, FINNEGAN, DURHAM & PINE

Dated: May 8, 1973

By \_\_\_\_\_  
John D. Foley  
Attorneys for Defendants  
Crippen Pipe Fabrication  
Corporation and Henry O. Crippen  
345 Park Avenue  
New York, New York 10022  
212 758-4800

OF COUNSEL:

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Robert E. Paulson  
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212 758-4800

Nelson Littell, Jr.  
420 Lexington Avenue  
New York, New York 10017  
212 889-5750

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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TUBECO, INC., :  
 :  
Plaintiff, :  
 : Civil Action No.  
 : 73 C 203  
v. :  
CRIPPEN PIPE FABRICATION CORPORATION : (Judge Neaher)  
and HENRY O. CRIPPEN, :  
 :  
Defendants. :  
----- X

DEFENDANTS' MOTION TO DISMISS PURSUANT TO  
F.R.C.P. RULE 12(b)(1) AND (6) FOR LACK  
OF SUBJECT MATTER JURISDICTION AND FAILURE  
TO STATE A CLAIM UPON WHICH RELIEF CAN BE  
GRANTED

CRIPPEN PIPE FABRICATION CORPORATION and HENRY O.  
CRIPPEN, defendants in the above-entitled action, respectfully  
move this Court, pursuant to Fed. R. Civ. P. Rule 12(b)(1) and  
(6), for an Order dismissing the Complaint for lack of subject  
matter jurisdiction and for failure to state a claim upon which  
relief can be granted.

The grounds for this motion are as follows:

1. Although the causes of action stated in the  
Complaint are characterized as claims for unfair competition and  
for violation of Section 1125(a) of the Lanham Act, they are each  
predicated upon the invalidity of United States Letters Patent  
No. 3,456,468 ("Crippen Patent") and, indeed, Complainant requests  
that the Crippen Patent be declared invalid.

2. Defendants have never charged or threatened plaintiff or anyone else with infringement of the Crippen Patent and therefore no justiciable controversy exists as to the Crippen Patent. This Court consequently has no jurisdiction to declare the Crippen Patent invalid and, hence, the Complaint fails to state a claim upon which relief can be granted.

3. Absent a justiciable controversy as to the Crippen Patent, or other federal claim, this Court lacks jurisdiction of unfair competition claims, as there is no pendent jurisdiction and there is also no diversity jurisdiction.

4. This Court lacks jurisdiction of the cause of action alleging a violation of the Lanham Act for the further reasons that (a) the alleged acts of soliciting business based upon a "false" patent are not acts of unfair competition within the scope of Section 1125(a) of the Lanham Act, and (b) defendants have shipped no goods and have performed no services in interstate commerce which embody the Crippen Patent, or even relate to hot pipe-bending.

This motion is based upon the Complaint and Answer herein, the facts stated in the accompanying Affidavits of Henry Q. Crippen, Bruce A. Wallace and Norman C. Stewart, and the points and authorities set forth in the accompanying Memorandum



In Support of Defendants' Motion.

Respectfully submitted,

MORGAN, FINNEGAN, DURHAM & PINE

Dated: May 8, 1973

By John D. Foley  
Attorneys for Defendants  
Crippen Pipe Fabrication  
Corporation and Henry O. Crippen  
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New York, New York 10022  
212 758-4800

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420 Lexington Avenue  
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IN THE UNITED STATES DISTRICT COURT  
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TUBECO, INC., :  
 :  
 Plaintiff, :  
 : Civil Action No.  
 v. : 73 C 203  
 :  
 CRIPPEN PIPE FABRICATION CORPORATION : (Judge Neaher)  
 and HENRY O. CRIPPEN, :  
 :  
 Defendants. :  
-----X

AFFIDAVIT OF HENRY O. CRIPPEN

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

HENRY O. CRIPPEN, being duly sworn, deposes and says:

1. I am a citizen of the United States and reside  
at 1700 Grand Concourse, Bronx, New York.

2. I am President and a Director of Crippen Pipe  
Fabrication Corporation, whose address is Building 269, Brooklyn  
Navy Yard, Brooklyn, New York, a corporation organized and existing  
under the laws of the State of Delaware since June 29, 1972.  
Crippen Pipe Fabrication Corporation, the Delaware corporation,  
is the successor to Crippen Pipe Fabrication Corporation, a  
corporation organized under the laws of the State of New York  
on September 18, 1970, and merged into the Delaware corporation  
on July 12, 1972.

3. United States Letters Patent No. 3,456,468 was issued to me on July 22, 1969 (hereinafter "Crippen Patent") and I assigned all my right, title and interest therein to Crippen Pipe Fabrication Corporation, the Delaware corporation, on October 31, 1972. A copy of the Assignment agreement is attached hereto as Exhibit A.

4. I did not assign any rights in the Crippen Patent to the original Crippen Pipe Fabrication Corporation, organized in the State of New York.

5. As President of Crippen Pipe Fabrication Corporation, I am responsible for all corporate operations, including sales and the licensing, administration and enforcement of the Crippen Patent.

6. In my capacity as President of Crippen Pipe Fabrication Corporation, I would be aware of and be responsible for, any and all attempts to license, any and all attempts to enforce, and any and all attempts to threaten enforcement of the Crippen Patent. To my knowledge, during the entire existence of Crippen Pipe Fabrication Corporation, and from the October 31, 1972 date of the assignment of the Crippen Patent to the Corporation to the present date, there have been no attempts to license, enforce or threaten enforcement of the Crippen Patent.

7. Prior to the incorporation of Crippen Pipe Fabrication Corporation as a corporation of the State of Delaware,



I was the sole owner of the entire right, title and interest in the Crippen Patent. At no time did I personally ever attempt to enforce or threaten enforcement of the Crippen Patent while it was in my sole ownership.

8. I have never requested and have never authorized anyone employed by Crippen Pipe Fabrication Corporation or its predecessor to request, and have never been given, either personally or as President of Crippen Pipe Fabrication Corporation or its predecessor, any legal opinion as to whether or not any product or service of plaintiff, Tubeco, Inc., or any customer of plaintiff, or anyone else, manufactured or sold any product, or practiced any process, that constituted an infringement of the Crippen Patent.

9. (a) I have never charged, accused or otherwise asserted, either to the plaintiff, Tubeco, Inc., or to anyone known to me to be a customer of plaintiff, or to any potential customer of myself or Crippen Pipe Fabrication Corporation or its predecessor, or to anyone else, that any product or service of plaintiff, or plaintiff's customers or anyone else, constitutes infringement of the Crippen Patent.

(b) I have never authorized anyone in my employ or in the employ of Crippen Pipe Fabrication Corporation or its predecessor to make any such charge, accusation or assertion as mentioned in Paragraph 9 (a) above.

(c) I know of no one in the employment of myself or Crippen Pipe Fabrication Corporation or its predecessor who has made any such charge, accusation or assertion as mentioned in Paragraph 9 (a) above.

10. I have never stated to anyone in the employment of myself or Crippen Pipe Fabrication Corporation or its predecessor, and I have never heard any employee of myself or Crippen Pipe Fabrication Corporation or its predecessor state, that plaintiff, Tubeco, Inc., or anyone known to me to be a customer of plaintiff, or anyone else, infringes any claim of the Crippen Patent.

11. I have never advised or suggested to any potential customer of myself or Crippen Pipe Fabrication Corporation or its predecessor, or to anyone else, that to purchase the goods and services of plaintiff, Tubeco, Inc. would be to incur an added cost of a direct or indirect royalty obligation, or other tribute, to Crippen Pipe Fabrication Corporation or to myself.

12. I have never advised or suggested to any potential customer of myself or Crippen Pipe Fabrication Corporation or its predecessor, or to anyone else, that infringement of the Crippen Patent could be avoided only by purchasing the products or services of Crippen Pipe Fabrication Corporation.

13. As of February 27, 1973, the date of filing of the Complaint herein, and up to the present time, neither Crippen Pipe Fabrication Corporation or its predecessor has made any sales, either in intrastate or interstate commerce, of any



equipment embodied by the Crippen Patent or of any service involving the practice of any process embodied in the Crippen Patent.

14. As of February 27, 1973, the date of filing of the Complaint herein, and up to the present time, neither myself or Crippen Pipe Fabrication Corporation or its predecessor has made any sales of any product, equipment or services relating to hot pipe-bending.

15. Method claims 11 and 12 of the Crippen Patent recite a method for bending large pipes which includes the step of bending a heated pipe

"...around the curvature faces of a continuous arced forming die which at the bending point extends approximately 180° around the pipe circumference..." (Emphasis added).

16. The method recited by the plaintiff, Tubeco, Inc. in Paragraph 5 of the Complaint as being one of plaintiff's established commercial techniques for bending pipe does not refer to the aforementioned limitation set forth in the method claims of the Crippen Patent; instead, Paragraph 5 (d) of the Complaint uses a vague and indefinite expression, not found in the claims or description of the Crippen Patent, broadly stating that the heated pipe is bent

"...around curvature faces of a continuous arced forming die which at the bending point extends substantially half way around the pipe circumference..." (Emphasis added).

17. I was employed by the plaintiff, Tubeco, Inc., from 1954 to 1966 and during that period of time I had knowledge of all of the equipment used, and all of the processes practiced, by Tubeco, Inc. in its pipe bending and fabrication operations. To my knowledge, at no time during my aforesaid period of employment did Tubeco, Inc. practice any process which included a step of bending a heated pipe around "curvature faces of a continuous arced forming die which at the bending point extends approximately 180° around the pipe circumference", as recited in method claims 11 and 12 of the Crippen Patent, wherefore Tubeco, Inc. never practiced the process of the Crippen Patent.

18. If the expression "substantially half way" used by the plaintiff in Paragraph 5 (d) of the Complaint is intended to mean that the curvature faces of the forming die extend "approximately 180°" around the pipe circumference, as recited in the Crippen Patent method claims, then, to my knowledge, at no time during my employment by Tubeco, Inc. between 1954 and 1966 did Tubeco, Inc. ever practice the process recited in Paragraph 5 of the Complaint.

19. On information and belief, as of February 27, 1973, the date of filing of the Complaint herein, and up to the present time, the plaintiff Tubeco, Inc. has produced no equipment embodied by the Crippen Patent, is not actively preparing to produce any such equipment, and consequently, has not practiced any process embodied by the Crippen Patent and

has no immediate intention or ability to practice such a process.

20. The last communication that I had with the plaintiff Tubeco, Inc. was on August 13, 1970, as the sole owner of the Crippen Patent, and was for the purpose of describing the novel apparatuses and processes claimed in the Crippen Patent and explaining the concepts, underlying principles, and economic advantages of such claimed apparatuses and processes over those known to me to be employed by plaintiff Tubeco, Inc. at that time. To my knowledge, and on information and belief, Tubeco, Inc. has never had and to this day does not have, any equipment embodied by the apparatus claims of the Crippen Patent; and never has practiced, and to this day does not practice, any process embodied by the Crippen Patent. Under these circumstances, I would not, and to this day have not, charged or threatened Tubeco, Inc. with infringement of the Crippen Patent.

21. Prior to my assignment of the Crippen Patent rights to Crippen Pipe Fabrication Corporation, I sought to interest many companies to use the apparatuses and processes described and claimed in the Crippen Patent, including plaintiff Tubeco, Inc. At no time, and up to the present date, did I ever consider that any such company, including Tubeco, Inc., was already using the claimed apparatuses or processes without my permission, and at no time did I ever threaten or accuse any



Further deponent sayeth not.

Subscribed and sworn to before me this                  day of  
 , 1973.

[SEAL]

ASSIGNMENT OF UNITED STATES PATENT

In consideration of Ten Dollars (\$10.00) and for other good and valuable considerations paid to HENRY O. CRIPPEN (hereinafter called "Crippen"), Crippen does hereby sell, assign and transfer unto CRIPPEN PIPE FABRICATION CORPORATION, a Delaware corporation, (hereinafter called the "Company"), the entire right, title and interest of Crippen in, to, and under United States Letter Patent Number 3,456,468 (hereinafter called the "Patent") relating to the "Hot Pipe Bending Method" invented by Crippen and by this reference made a part hereof, and the inventions disclosed in the Patent and all the divisions, continuations, renewals, reissues, and extensions of the Patent; and the recoveries, if any, for past infringement of the Patent together with the right of Crippen to sue for and collect the same; and Crippen further agrees to execute and deliver to the Company such further instruments of conveyance, transfer and assignment, and shall, at the Company's expense, take such other action as the Company may reasonably request, in order more effectively to convey and transfer to the Company all of the rights of Crippen to the Patent and the inventions disclosed therein.

IN WITNESS WHEREOF, Crippen has executed this

Assignment as of the 31st day of October, 1972.

s/ Henry O. Crippen  
Henry O. Crippen



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

----- X  
TUBECO, INC., :  
 :  
Plaintiff, :  
 :  
v. : Civil Action No.  
 : 73 C 203  
CRIPPEN PIPE FABRICATION CORPORATION : (Judge Neaher)  
and HENRY O. CRIPPEN, :  
 :  
Defendants. :  
----- X

AFFIDAVIT OF NORMAN C. STEWART

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

NORMAN C. STEWART, being duly sworn, deposes and says:

1. I am a citizen of the United States and reside at  
15 Lockwood Lane, Norwalk, Connecticut 06851.

2. I am Vice-President in charge of Sales of Crippen  
Pipe Fabrication Corporation, whose address is Building 269,  
Brooklyn Navy Yard, Brooklyn, New York. I have been employed  
by Crippen Pipe Fabrication Corporation since August 1, 1972  
and have held the aforesaid position during my entire period of  
employment by Crippen Pipe Fabrication Corporation.

3. My responsibilities as Vice-President of Sales at Crippen Pipe Fabrication Corporation include sales and sales management, project management and scheduling with respect to sales, co-ordination of project scheduling with engineering and production, sales promotion and customer relations.

4. In my capacity as Vice-President of Sales at Crippen Pipe Fabrication Corporation, I would be aware of any and all attempts to license, any and all attempts to enforce, and any and all attempts to threaten enforcement of United States Letters Patent No. 3,456,468, issued to Henry O. Crippen on July 22, 1969 (hereafter "Crippen Patent"). To my knowledge, during my entire period of employment by Crippen Pipe Fabrication Corporation, there have been no attempts to license, enforce or threaten enforcement of the Crippen Patent.

5. (a) I have been given no authorization to charge, accuse or to otherwise assert, either to the plaintiff, Tubeco, Inc., or to anyone known to me to be a customer of plaintiff, or to any potential customer of Crippen Pipe Fabrication Corporation, or to anyone else, that any product or service of plaintiff, or plaintiff's customers or anyone else, constitutes infringement of the Crippen Patent, and I have never made such a charge, accusation or assertion to anyone.

(b) I know of no one who has been given authorization by either Henry O. Crippen or Crippen Pipe Fabrication Corporation to make any such charge, accusation or assertion as

mentioned in Paragraph 5(a) above.

(c) I know of no one in the employment of Henry O. Crippen or Crippen Pipe Fabrication Corporation who has made any such charge, accusation or assertion as mentioned in Paragraph 5(a) above.

6. I have never heard anyone in the employment of Henry O. Crippen or Crippen Pipe Fabrication Corporation state that plaintiff, Tubeco, Inc., or anyone known to me to be a customer of plaintiff, or anyone else, infringes any claim of the Crippen Patent.

7. I have never advised or suggested to any potential customer of Crippen Pipe Fabrication Corporation, or to anyone else, that to purchase the goods and services of plaintiff Tubeco, Inc. would be to incur an added cost of a direct or indirect royalty obligation, or other tribute, to Crippen Pipe Fabrication Corporation, or to Henry O. Crippen.

8. I have never advised or suggested to any potential customer of Crippen Pipe Fabrication Corporation, or to anyone else, that infringement of the Crippen Patent could be avoided only by purchasing the products or services of Crippen Pipe Fabrication Corporation.

9. As of February 27, 1973, the date of filing of the Complaint herein, and up to the present time, Crippen Pipe Fabrication Corporation has made no sales, either in intrastate



or interstate commerce, of any equipment embodied by the Crippen Patent or of any service involving the practice of any process embodied in the Crippen Patent.

10. As of February 27, 1973, the date of filing of the Complaint herein, and up to the present time, Crippen Pipe Fabrication Corporation has made no sales of any product, equipment or services relating to hot pipe-bending.

11. I was employed in the Sales Department of the plaintiff, Tubeco, Inc., from August 1968 to June 1970. During that time, I gained general familiarity with all of the equipment used and all of the processes practiced by Tubeco, Inc. To my knowledge, during the period from August 1968 to June 1970, Tubeco, Inc. had no equipment embodied by the Crippen Patent and practiced no process embodied by the Crippen Patent.

12. On information and belief, as of February 27, 1973, the date of filing of the Complaint herein, and up to the present time, the plaintiff Tubeco, Inc. has produced no equipment embodied by the Crippen Patent, is not actively preparing to produce any such equipment, and consequently, has not practiced any process embodied by the Crippen Patent and has no immediate intention or ability to practice such a process.

Further deponent sayeth not.

*Norman C. Stewart*  
Norman C. Stewart

Subscribed and sworn to before me this *2* day of  
*May*, 1973.

*J. Leanne J. Steadman*  
Notary Public

[SEAL]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X  
TUBECO, INC. :  
 :  
Plaintiff, :  
 : Civil Action No.  
v. : 73 C 203  
 :  
CRIPPEN PIPE FABRICATION CORPORATION : (Judge Neaher)  
and HENRY O. CRIPPEN, :  
 :  
Defendants. :  
-----X

AFFIDAVIT OF BRUCE A. WALLACE

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

BRUCE A. WALLACE, being duly sworn, deposes and says:

1. I am a citizen of the United States and reside at  
11 Myrtle Street, White Plains, New York.

2. I am Vice-President and General Manager and a  
Director of Crippen Pipe Fabrication Corporation, whose address  
is Building 269, Brooklyn Navy Yard, Brooklyn, New York. I have  
been employed by Crippen Pipe Fabrication Corporation, a Delaware  
corporation, and by its predecessor, Crippen Pipe Fabrication  
Corporation, a New York corporation, continuously since September  
18, 1970 and have held the aforesaid position during my entire  
period of employment by the aforesaid corporations.



3. My responsibilities as Vice-President and General Manager of the Delaware Crippen Pipe Fabrication Corporation include general management of all corporate operations including sales, engineering, purchasing, production, inspection, financial, planning and development activities.

4. In my capacity as Vice-President and General Manager of the Delaware Crippen Pipe Fabrication Corporation, I would be aware of any and all attempts by the Corporation to license, any and all attempts to enforce, and any and all attempts to threaten enforcement of United States Letters Patent No. 3,456,468, issued to Henry O. Crippen on July 22, 1969 (hereafter "Crippen Patent") since the October 31, 1972 date of the assignment of the Crippen Patent rights to the Corporation. To my knowledge, during my entire period of employment by Crippen Pipe Fabrication Corporation, there have been no attempts to license, enforce or threaten enforcement of the Crippen Patent.

5. (a) I have been given no authorization to charge, accuse or to otherwise assert, either to the plaintiff, Tubeco, Inc., or to anyone known to me to be a customer of plaintiff, or to any potential customer of Crippen Pipe Fabrication Corporation or its predecessor, or to anyone else, that any product or service of plaintiff, or plaintiff's customers or anyone else, constitutes infringement of the Crippen Patent, and I have never made such a charge, accusation or assertion to anyone.

(b) I know of no one who has been given authorization by either Henry O. Crippen or Crippen Pipe Fabrication

Corporation or its predecessor to make any such charge, accusation or assertion as mentioned in Paragraph 5(a) above.

(c) I know of no one in the employment of Henry O. Crippen or Crippen Pipe Fabrication Corporation or its predecessor who has made any such charge, accusation or assertion as mentioned in Paragraph 5(a) above.

6. I have never heard anyone in the employment of Henry O. Crippen or Crippen Pipe Fabrication Corporation or its predecessor state that plaintiff, Tubeco, Inc., or anyone known to me to be a customer of plaintiff, or anyone else, infringes any claim of the Crippen Patent.

7. I have never advised or suggested to any potential customer of Crippen Pipe Fabrication Corporation, or to anyone else, that to purchase the goods and services of plaintiff Tubeco, Inc. would be to incur an added cost of a direct or indirect royalty obligation, or other tribute, to Crippen Pipe Fabrication Corporation or its predecessor, or to Henry O. Crippen.

8. I have never advised or suggested to any potential customer of Crippen Pipe Fabrication Corporation or its predecessor, or to anyone else, that infringement of the Crippen Patent could be avoided only by purchasing the products or services of Crippen Pipe Fabrication Corporation or its predecessor.

9. As of February 27, 1973, the date of filing of the Complaint herein, and up to the present time, both Crippen

Pipe Fabrication Corporation and its predecessor made no sales, either in intrastate or interstate commerce, of any equipment embodied by the Crippen Patent or of any service involving the practice of any process embodied in the Crippen Patent.

10. As of February 27, 1973, the date of filing of the Complaint herein, and up to the present time, both Crippen Pipe Fabrication Corporation and its predecessor made no sales of any product, equipment or services relating to hot pipe-bending.

Further deponent sayeth not.

Bruce A. Wallace

Subscribed and sworn to before me this                  day of  
                    , 1973.

Notary Public

[SEAL]



for years and which they intended to continue to use. If Crippen were to have his own way, such use would continue only upon payment to him.

The patent is the very basis of the Crippen enterprise; it was promulgated to the trade by articles, brochures, letters and direct customer presentations. Any recipient would necessarily conclude that Crippen, not Tubeco, held the proprietary rights to the process described and that to purchase from Tubeco goods manufactured under the process would be to contract with a source of supply which might be cut off at any time. The very circumstances had threat written all over. It took no actual words of threat to convey the threat.

The sole remaining argument of defendants is that plaintiff alleges neither use of the patented invention nor any immediate ability to use the patented invention. Such argument, we submit, is trite. Tubeco has amply demonstrated that it has been and will continue to use the process and apparatus which are described in the patent but which it, not Crippen, owns.

### III. THIS COURT HAS LANHAM ACT JURISDICTION

The facts pertinent to Lanham Act jurisdiction obtain from defendants' interstate solicitation of sales, highlighting:

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X	
TUBECO, INC.,	:
	:
Plaintiff,	:
	:
v.	:
	:
CRIPPEN PIPE FABRICATION CORPORATION,	:
and HENRY O. CRIPPEN,	:
	:
Defendants.	:
-----X	

73 Civil 203  
(Judge Neaher)

AFFIDAVIT OF ALLAN B. WESLER

STATE OF NEW YORK                    )  
                                      )ss:  
COUNTY OF KINGS                    )

I, ALLAN B. WESLER, being first duly sworn, hereby  
depose and say:

1. I am a citizen of the United States. residing at  
655 Park Avenue, in the City, County and State of New York,  
and I make this affidavit in support of plaintiff's opposition  
to defendants' Motion to Dismiss the above-entitled action.

2. I am the holder of an engineering degree from Tulane  
University and have been employed by plaintiff herein for  
the past twenty-four years, including the years prior to  
1961 when plaintiff was known as Carl Pipe Company\*. For the  
last twenty years, I have served as plaintiff's President.

\* Specifically, Carl Pipe Bending Corporation

3. Since prior to my said employment, plaintiff has invested heavily in and has been conducting a business of pipe fabrication, that is, the precision custom bending and joining of steel pipe larger than six inches in diameter, as used for example in chemical plants, power plants, refineries, and the like. Plaintiff's said business is of interstate proportions, and plaintiff prides itself on the quality of its services and products, to a customer clientele which includes the best known and respected large corporations in this country. Plaintiff's customers receive plaintiff's save-harmless assurances against liability for patent infringement.

4. The custom bending of large pipe, softened by preheat, is known as hot-pipe bending and has been a feature of plaintiff's business throughout my said employment, to the extent that plaintiff is regarded as one of the few leading sources of such products in the United States.

-Although I have been advised that various features of plaintiff's method and apparatus for hot-pipe bending may at some time have been considered patentable, it has been plaintiff's election and decision not to seek patent protection thereon, but rather to retain its knowledge, skills, inventions and tools for its own use in meeting the needs of its customers for the products of hot-pipe bending.



5. Defendant Crippen was employed by plaintiff for the years 1954 to 1966, assigned to duties pertaining to plaintiff's hot-pipe bending methods and apparatus and had detailed knowledge of plaintiff's technique, recited in broad terms in Paragraph 5 of the Complaint herein.

6. It was some years after his leaving plaintiff's employ that I became aware of defendant Crippen's efforts to obtain patent protection in the field of hot-pipe bending. Briefly, my knowledge derives from two meetings with Mr. Crippen, when he personally visited me at plaintiff's premises; the first of these meetings was while he had a pending patent application, and the second meeting was after his patent, Patent No. 3,456,468 in suit, had issued.

7. I recall the first meeting as being relatively short, and occurring on a Saturday, when Mr. Crippen sought me at my office, saying he was just passing by and thought he would take a chance at finding me in. He said he had a pending patent application which would become a patent in a few months, that the patent application covered an idea of his for a new way of making hot-pipe bends, and that he wanted to sell it to us because it would save us man-hours and money. I declined his offer to then disclose his idea or to show me any supporting papers, telling him that we would not want to consider such materials until he had obtained his patent, and I explained that I did not want to put the company into a position in which he might claim that we were making unauthorized use of his idea.

8. My second meeting with Mr. Crippen occurred some time after his patent, the patent in suit, had issued. Mr. Crippen arranged with me for this meeting, to discuss the patent. The meeting occurred shortly thereafter, in my office, and lasted about a half hour; I had Mr. Katz, our Engineering Manager present throughout. Other Tubco people were brought into the meeting after it had already begun with Mr. Katz and me, and these others I recall as Messrs. Arthur Green and Louis Webber.

9. This second meeting opened with pleasantries and by my repeating the previously stated position that we did not wish to see or have any disclosure from Mr. Crippen unless and until he had his patent, which, I was assured, he now had, since he supplied the patent number to us. And to my question as to how much was Mr. Crippen asking for his patent or for its use, he replied that he had not yet determined what the patent was worth but that he was willing to leave that aspect to me, knowing that he would be fairly treated, as he always had been; it was clear in my mind that Mr. Crippen was proposing an arrangement whereby we could use his patented technique only upon payment to him, the amount of such payment being left open.

10. Mr. Crippen proceeded to expound on economies realizable through his invention, but I cut this short, saying, "Let's look at the patent"; and Messrs. Green and Webber were called to the meeting.

11. Mr. Crippen then produced and briefly described drawings which appeared to me to be copies of what I later recognized as drawings of the patent in suit. These drawings bore such close resemblance to equipment in use at Tubeco that I soon exclaimed to Mr. Crippen, in words or substance: "You're trying to sell us our own process". To this, he remarked -- "No, I have other improvements I can show you". But I had no interest in his later returning with "other improvements" if his patent was on our process; I was annoyed and left the meeting. I understand that the others stayed a little longer for a closer look at the drawings, and my initial observation was confirmed to me by Messrs. Katz, Green and Webber.

12. A copy of Mr. Crippen's Patent No. 3,456,468 was later obtained and upon its lay examination by Mr. Katz and myself, it was clear to us:

- (a) That the patent covered the hot-pipe bending method used by plaintiff for about twenty years, and still in use, as I had concluded from the drawings and Mr. Crippen's oral description at the second meeting;
- (b) That Mr. Crippen was seeking payment from Tubeco for that which Tubeco already owned;
- (c) That, based on my knowledge of what Mr. Crippen already knew of hot-pipe bending practice at Tubeco, it was plain that the patent had issued on Mr. Crippen's understatement of the prior art to the Patent Office;
- (d) That even though Mr. Crippen did not use words directly threatening suit, and even though Mr. Crippen



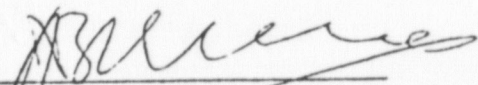
acknowledged that I would be fair in regard to payment, it was nevertheless clear to those who attended the second meeting that the Crippen patent was being used as a club.

13. Some time after Mr. Katz and I had discussed the Crippen patent and had developed the indicated conclusions, namely, June 3, 1971, I wrote Mr. Crippen so that he would understand our position with respect to his patent. Copy of said letter was marked PDX-18 on the Crippen deposition of May 15, 1973 and is annexed.

14. By the end of 1972, it became apparent to me, from various publicity items, that Mr. Crippen and his newly formed company, the defendant corporation, were making Crippen Patent No. 3,456,468 the cornerstone of their business and business promotion. In view of my knowledge of Mr. Crippen's knowledge gained while employed by plaintiff, it was plain to me that his new business was being founded on a misrepresentation of ownership as to the patented subject matter. And so I called upon counsel for an analysis and recommendation.

15. After a thorough analysis of the facts was made by counsel, and upon recommendation of counsel, I in my capacity as Tubeco's President, authorized the bringing of this action to foreclose any possible suits by Crippen against either Tubeco or its customers and to foreclose any threats against customers.

SWORN and subscribed to  
before me this 27 day of July, 1973.

  
Allan B. Wesler

Notary Public  
State of New York  
Notary Public  
No. 414-1111  
Qualified in New York  
Notary Public & Co. Y. County  
Commission Expires Mar. 1, 1975

2  
(  
(  
C. J. P. P.

PDX-18

June 3, 1971

Mr. Henry Crippen  
601 E. 167th Street  
Bronx, N. Y.

Re: Your Patent / 3,456,468

Dear Henry:

With respect to your above-referenced patent, we find that no essential element claimed by you to be novel is in fact novel, as that most elements have either been used by Tobacco for many years prior to March 20 of 1967 or were tried and discarded prior to that time.

Tobacco does not consider your patent valid, and it will continue to use all of the procedures which it presently is using and has used in the past.

Very truly yours,

TUBECO, INC.

AD:ck

Allan B. Wesler  
President

cc: Arthur S. Henson, Esq.  
Jensenberg, Henson & Baker

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X	:	
TUBECO, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	73 Civil 203
	:	(Judge Leasher)
CRIPPEN PIPE FABRICATION CORPORATION,	:	
and HENRY O. CRIPPEN,	:	
	:	
Defendants.	:	
-----X	:	

AFFIDAVIT OF ARTHUR A. GREEN

STATE OF NEW YORK                    )  
  ) ss:  
COUNTY OF KINGS                    )

I, ARTHUR A. GREEN, being first duly sworn, hereby  
depose and say:

1. I am a citizen of the United States, residing at  
4 Eaton Lane, Scarsdale, New York, and I make this affidavit  
in support of plaintiff's opposition to defendants' Motion  
to Dismiss the above-entitled action.

2. I hold a degree in Mechanical Engineering from  
Cornell University, and have been continuously employed by  
plaintiff since 1963, having had a brief initial working  
experience at Carl Pipe Company\* in 1949. Since 1968, I  
have been the plaintiff's Executive Vice President.

---

\*Specifically, Carl Pipe Bending Corporation.



3. I recall an occasion several years ago when I was summoned to the office of Mr. Wesler, plaintiff's President, to witness disclosure of a patented invention, by Mr. Henry O. Crippen, a former employee of plaintiff. I had been told that the invention related to hot-pipe bending, a subject of real interest and awareness to me, in view of plaintiff's many years of accomplishment and practice in the field, and that Mr. Crippen was trying to interest the company in use of the patent, under terms yet to be developed.

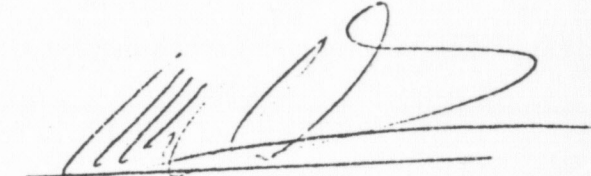
4. As I entered Mr. Wesler's office, the meeting was already in progress, involving Mr. Wesler, Mr. Crippen and plaintiff's Engineering Manager, Mr. Lyber Katz. Mr. Louis Webber, plaintiff's Assistant Manager of Projects, followed shortly after my entry.

5. My recollection is that upon arrival of Mr. Webber and myself, Mr. Crippen produced some sheets of drawings which he said applied to his hot-pipe bending patent. I remember my own personal reaction that these drawings showed a remarkable resemblance to hot-pipe bending equipment in use at Tubeco. I also remember Mr. Wesler's vocal reaction to the effect that Mr. Crippen was trying to make Tubeco pay him for use of its own process, and I recall Mr. Wesler's obvious annoyance and prompt departure.

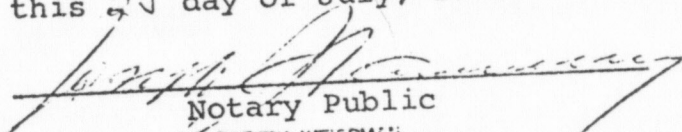
6. After Mr. Wesler left, Messrs. Katz, Webber and I stayed for brief further study of the drawings in Mr. Crippen's presence. We even pointed out to him several specific items, believed to be uniquely Tubeco's, but which were featured in

the Crippen drawings. Mr. Crippen did not care to discuss matters with us, stating that Mr. Wesler was the man he wanted to deal with, and then he left with his drawings.

7. I have read Mr. Wesler's affidavit of even date herein and fully confirm it as to the indicated part of this (what Mr. Wesler calls his second) meeting with Mr. Crippen. I also confirm the statement of Mr. Wesler's Paragraph 12; I too developed the conclusion that Mr. Crippen was trying to use his patent to make our company pay for using that which it had owned since the time of Mr. Crippen's employment with Tubeco.

  
Arthur A. Green

SWORN and subscribed to before me  
this 25 day of July, 1973.

  
Notary Public  
JOSEPH WEISSMAN  
Notary Public, State of New York  
No. 464507233  
Qualified in Queens County  
Exp. Filed in Kings & Richmond Co. at  
Schenectady, New York 1230

v.

Defendants.

1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF KINGS )

1. I am a citizen of the United States, residing at 115-10 221st Street, Cambria Heights, New York, and I make this affidavit in support of plaintiff's opposition to defendants' Motion to Dismiss the above-entitled action.

2. I am plaintiff's Assistant Manager of Projects and have been continuously employed by plaintiff for eleven years in engineering related to hot-pipe bending and fabrication. I am a night-school student in Business Administration at Fordham University.

3. I remember a time several years ago when I was called to the President's office (Mr. Wesler's) for disclosure of a patented invention, by Mr. Henry O. Crippen, whom I once knew as an employee at Tubeco. I was told that the invention

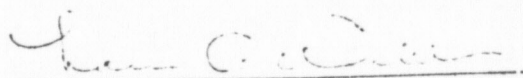


was in hot-pipe bending, a subject long familiar to me through my engineering association with plaintiff on this subject for all my years of experience with plaintiff; I was told that Mr. Crippen was trying to interest the company in use of the patent.

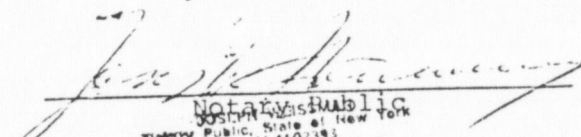
4. As I entered Mr. Wesler's office, the meeting was already in progress, involving Mr. Wesler, Mr. Crippen, Mr. Green and plaintiff's Engineering Manager, Mr. Lyber Katz.

5. I remember that when I came to the meeting, Mr. Crippen spread out drawings which he said were from his patent, and I remember being impressed at how closely these drawings were to the Tubeco hot-pipe bending equipment known to me. I also remember Mr. Wesler saying to Mr. Crippen that Mr. Crippen was trying to get Tubeco to pay for what Tubeco had been doing for years; Mr. Wesler was upset and soon left the meeting.

6. The rest of us stayed for a short while with Mr. Crippen, looking further at the drawings. Several particular features of his drawings were called to his attention as being Tubeco's. Mr. Crippen said he wanted only to talk with Mr. Wesler and so he left with his drawings.

  
LOUIS WEBBER

Sworn to and subscribed before me  
this 25<sup>th</sup> day of July 1973

  
Notary Public  
Notary Public, State of New York  
No. 414,02393  
Qualified in Queens County  
Cert. Filed in Kings & N. Y. Counties  
Commission Expires March 20, 1975

-----X  
TUBECO, INC., :  
 :  
Plaintiff, :  
 :  
v. : 73 Civil 203  
 : (Judge Neaher)  
CRIPPEN PIPE FABRICATION CORPORATION, :  
and HENRY O. CRIPPEN, :  
 :  
Defendants. :  
-----X

University, respectively, and have practiced actively in these fields throughout my experience with plaintiff. Hot-pipe bending has been among my active concerns during this entire period, and I well knew and worked with Mr. Henry O. Crippen, defendant herein, during his entire employment by plaintiff, 1954 to 1966.

3. After he had left Tubeco, I recall receiving from Mr. Crippen more than one telephone call at my home. Mr. Crippen was telling me that he had an invention relating to hot-pipe bending and that he was anxious to have Tubeco consider its use. I determined that he did not yet have a patent or patent application and told him that plaintiff would not consider any disclosure from him unless and until he got a patent. I recalled to him that, as he knew, we together had had many previous discussions regarding improvements in hot-pipe bending and I said I did not want the embarrassment of his having an opportunity to claim that we were making unauthorized use of his ideas. I specifically stated that if he got a patent on something different from what he knew had been done or considered at Tubeco, there should then be no difficulty in arranging for a discussion with Mr. Wesler, plaintiff's President, as to any prospective Tubeco use of his patent. I related this to Mr. Wesler, and some years later a meeting with Mr. Crippen was held in Mr. Wesler's office, attended by me throughout, and attended in part by other Tubeco personnel, including Messrs. Green and Webber, as best I can recall.



4. I have read Mr. Wesler's affidavit of even date in this matter and confirm that my meeting with the indicated gentlemen is the second meeting identified by Mr. Wesler, related particularly in Paragraphs 8, 9, 10, 11 of the Wesler affidavit. I also confirm the accuracy of Mr. Wesler's reporting and, in particular, Mr. Wesler's spontaneous reaction when first shown the drawings Mr. Crippen said were for his patented invention; Mr. Wesler exclaimed to Mr. Crippen, to the effect that Mr. Crippen was trying to peddle to Tubeco its own process. Mr. Wesler was so obviously annoyed or disappointed that he soon left the meeting, so that the rest of us were left to look further at Mr. Crippen's drawings. Mr. Crippen had told me that his invention would enable Tubeco to make "multiple compound bends with zero tangent between successive bends, and he pointed to the clamp of Fig. 10 (so labeled in his Patent No. 3,456,468) as the feature which would permit this; I pointed out to him that a clamp of this kind had been made and tried by plaintiff during Mr. Crippen's employ and that it had been discarded because the clamp teeth would dig into and thus damage the pipe. I also pointed out to him that other specific details of his drawings were according to plaintiff's earlier practice and that the overall method of operation was that which had been evolving in plaintiff's practice throughout my entire experience.

5. After the Crippen patent was available, I was one of those who carefully reviewed it in terms of its technical presentation and was forced to conclude as did Mr. Wesler, namely, that the patent was directed to what had been plaintiff's practice for twenty years, that Mr. Crippen was seeking payment from Tubeco for what Tubeco owned and that the acknowledgment of prior art in the patent was remarkably less than candid, in that Tubeco's practice (which I knew was known to Mr. Crippen) was not even outlined.

6. I have attended pre-trial depositions of defendant Crippen in this action, in the course of which a photograph of plaintiff's hot-pipe bending apparatus has been used to enable Mr. Crippen's identification of hot-pipe bending structure and method known to him to have been in use by plaintiff during the period of his employment by plaintiff, 1954 to 1966. A copy of this photograph, identified PDX-12A, bears legends which Mr. Crippen adopted and which will serve for my present description of the plaintiff's hot-pipe bending process.

7. Tubeco's said process, in use today and for the period of Mr. Crippen's employment by plaintiff, uses curved forming dies and comprises the following steps, explanatory reference being column-coordinated to the applicable labeled structural elements of said photograph of PDX-12A:

Tubeco structure labeled  
in PDX-12A

(a) Heating the pipe to a temperature at which it is bendable;

In PDX-12A, the heating furnace for pipe to be bent appears at upper left corner of the photograph.

(b) Anchoring one end of the pipe;

The "Holding Clamp" is positioned by a "Brace or Bracket" to provide "back pressure" anchoring support for one end of the "pipe being bent".

(c) Bending the pipe in a horizontal plane, to the extent of the desired number of degrees;

The men in the picture are using an "Angle Bar" to check that the pipe is bent to the desired number of degrees.

(d) The bend is around the curvature face of a continuous arced forming die which at the bending point extends approximately 180° around the pipe circumference;

The bend is around the curvature face of a continuously arced "Forming Die".

(e) The radius of the die-formed bending arc is equal to the radius of the bend to be made and is spaced from the bending floor; and

This description accurately applies to the photograph because the full arcuate extent of the bend is at a radius conforming and determined by that of the "Forming Die".

(f) The pipe being bent rests on riding supports which support the pipe at an elevation which is spaced from the bending floor at substantially the same distance as the bending die is spaced from the same floor.

The "Floor Pipe" designation the photograph identifies one of several riding supports as thus defined.

8. The only point of the above description which does not exactly match what is shown and identified in the photograph of PDX-12A is at 7(d) wherein the curvature face[s] of a forming die is stated to extend "approximately 180° around the pipe circumference"; for example, in PDX-12A, I would estimate that the forming-die curvature is approximately 140° around the pipe circumference.

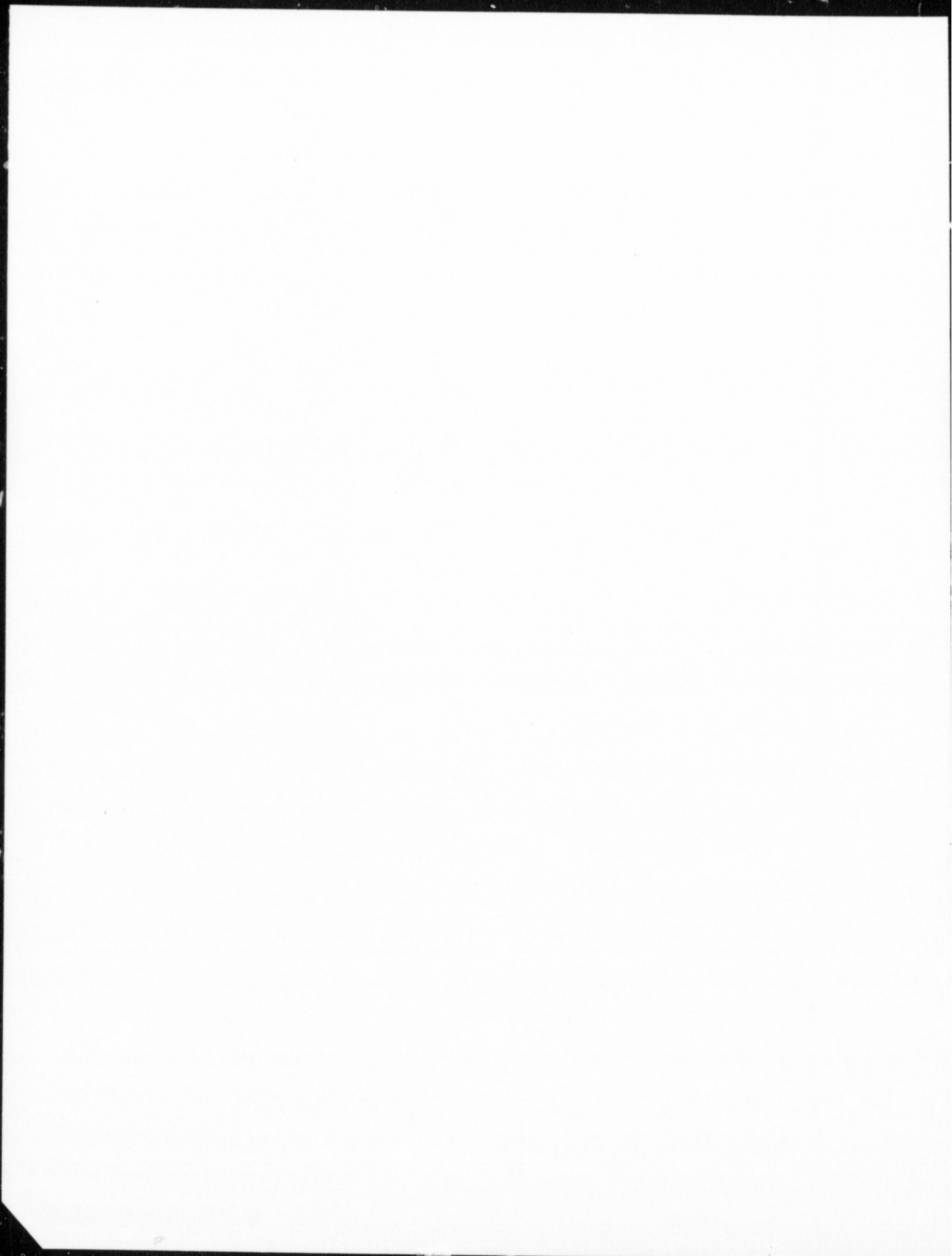


9. The forming die in PDX-12A is but one of a large number of different such dies selectively available for and in repeated use today and during the plaintiff's employment of defendant Crippen. And among plaintiff's supply of such dies in continuous use by plaintiff in the past ten years are dies built with a circumferential wrap of up to 180°, depending upon the particular need. A significant number of these dies are formed by first longitudinally cutting a length of pipe in half (180°) and thereafter wrapping the 180° section of pipe about a die-web plate, to develop the desired radius of bend.

10. Tubeco uses approximately thirty dies manufactured in the foregoing manner for the purposes of hot bending of pipe and has employed these dies for at least the past ten years. At least five of these dies have a circumferential arc of approximately 180°. These five dies have been in existence at Tubeco for a minimum of eight years, and the average use of each has been at least ten times per year. Such dies including their diameter and radius of bend are listed below. Alongside each is included the measured length of circumferential arc (inches), and the related circumferential angle (degrees):

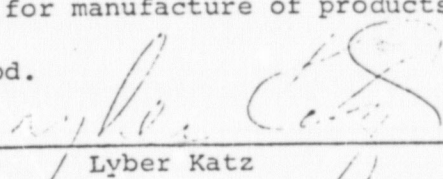
Die	Circumferential Length (Inches)	Circumferential Angle (Degrees)
16" - 96"	25.25	180°
16" - 80"	24.5	175°
4" - 20"	9.5	180°*
6" - 30"	10	173°
8" - 32"	14.75	180°*

\* Actually over 180° due to tangents.

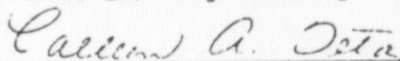


11. I have personally checked and measured the arc of the curvature face of the forming die identified 3 in Crippen Patent No. 3,456,568 (PDX-3, Fig. 4) and find it to measure 169°, and I have also examined the arc of the curvature face of the forming die (PDX-37C) of the model as to which Mr. Crippen gave deposition testimony July 2, 1973; photographs to show this curvature on the Crippen model have been identified PDX-37N, 37P and copies are annexed. The extent of curvature-face arc in the model is definitely less than 180° and in my judgment is virtually the 169° which I measured from Fig. 4 of the patent. In any event, I would as a person having skill in the art of hot-pipe bending certainly understand the expression "approximately 180°" to be sufficiently elastic to encompass the arcuate extents which I observed on the Crippen patent drawing (PDX-3, Fig. 4) and on his model (PDX-37C).

12. When any of the dies of Paragraph 10 above are used by plaintiff, the plaintiff's performance of its technique of hot-pipe bending completely conforms to the steps (a) through (f) recited in Paragraph 7 above, such use being as noted above at least ten times per year for each die, for at least the eight-year period to date, and for manufacture of products sold by plaintiff over this period.

  
Lyber Katz

SWORN and subscribed to before  
me this 25 day of July 1973.

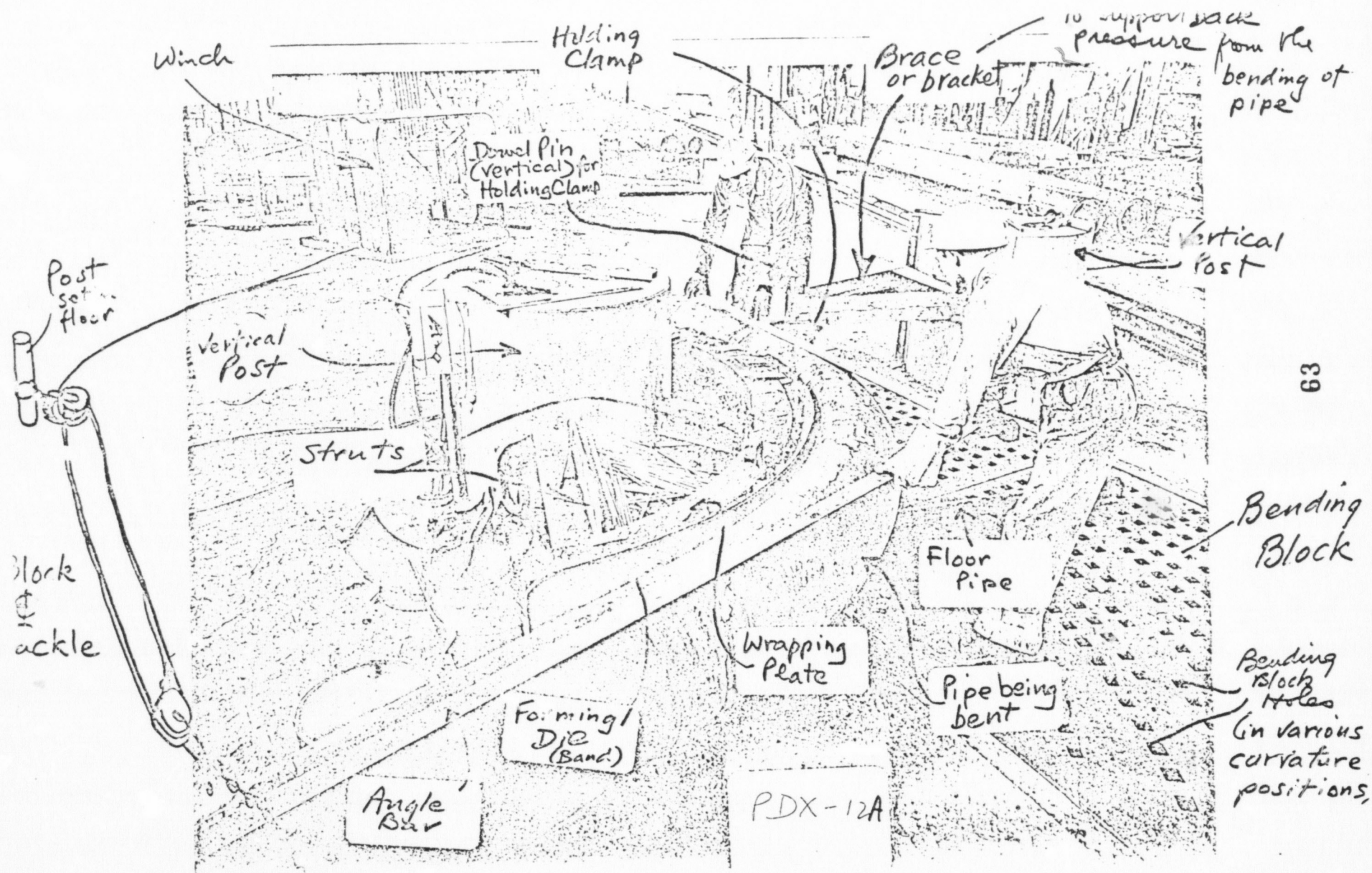


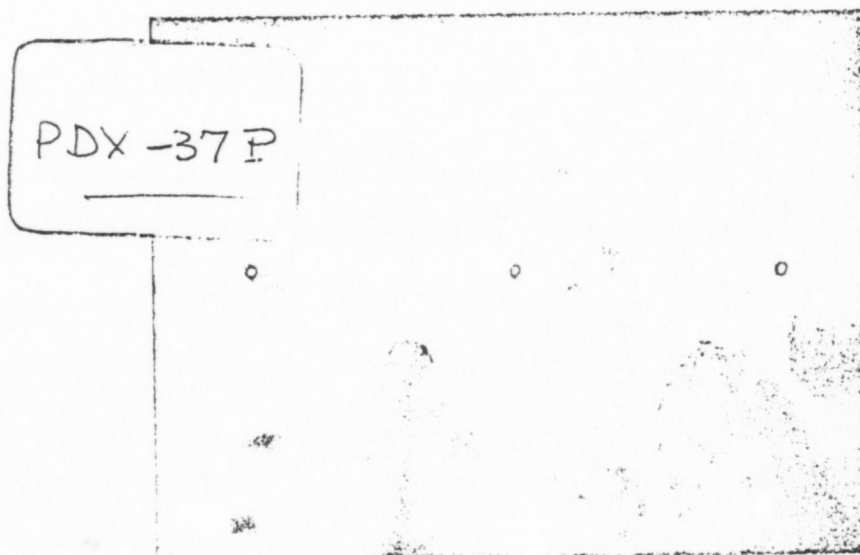
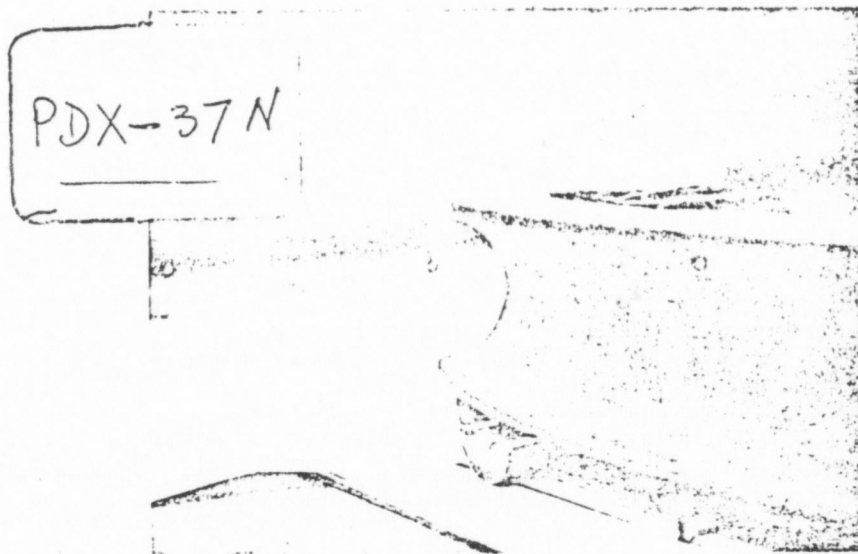
Notary Public

Carion A. Jeta  
Notary Public, State of New York  
Borough of Manhattan  
County of New York  
Commission Expires 12/31/74

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TUBECO, INC.,

v.

Defendants.

AFFIDAVIT OF ROY C. HOPGOOD

COUNTY OF NEW YORK

1. I am an attorney admitted to the Bar of the State of New York and to this Court and am a member of the firm of attorneys for plaintiff herein; I have also been registered to practice before the United States Patent Office for more than thirty years. I have been active in the preparation for and conduct of this litigation and am familiar with the facts, and I make this affidavit in support of plaintiff's opposition to defendants' Motion to Dismiss the above-entitled action.



2. In my said work for this litigation, I studied Crippen Patent No. 3,456,468, in suit. I also personally observed the hot-pipe bending apparatus of plaintiff, in operation upon heated steel pipe which I was informed was of 18-inch diameter; and I compared the plaintiff's current commercial method, as witnessed by me, with the methods recited in claims 11 and 12 of said Crippen patent. In my opinion, the method which I observed in current commercial use at plaintiff's plant fully responded to the language of said Crippen method claims 11 and 12.

3. I have also examined the affidavits of Allan B. Wesler and Lyber Katz executed on even date herewith and I have compared with Crippen patent claims 11 and 12 the summary of plaintiff's hot-pipe bending technique recited by Mr. Katz at Paragraphs 7 to 11 of his affidavit. The exact correlation between said Crippen patent claims and Mr. Katz' affidavit appears from the following tabulated parsing of these claims:

Crippen Patent  
No. 3,456,468

11. The method of bending large pipes of at least 6" diameter which comprises

heating the pipe to the bending temperature,

anchoring one end of the pipe

Wesler Affidavit, Para. 3, and  
Katz Affidavit, Para. 7 to 11

Wesler Affid., Para. 3:

"[Plaintiff's business is] the precision custom bending \* \* \* of steel pipe larger than six inches in diameter."

Katz Affid., Para. 7(a):

"[Plaintiff's] heating furnace for pipe to be bent appears at the upper left corner of the photograph [PDX-12A]".

Katz Affid., Para. 7(b):

"[Plaintiff's] 'Holding Clamp' \* \* provide[s] anchoring support for c end of the 'pipe being bent'."

and bending the pipe in a horizontal plane the desired number of degrees around the curvature faces of a continuous arced forming die

which at the bending point extends approximately 180° around the pipe circumference

and the radius of the arc is equal to the radius of the bend to be made and is spaced from the bending floor.

12. The method of claim 11 in which the pipe being bent rests upon riding supports which support the pipe spaced from the bending floor substantially the same distance the bending die is spaced from said floor.

4. I was also present at the Crippen depositions herein and have reviewed the transcripts thereof, in the particular context of said Crippen patent claims 11 and 12, and of Mr. Crippen's admissions as to what he recalls in commercial use at plaintiff during the period of his employment by plaintiff. These admissions are correlated, under Tabulation A (annexed) with a parsing of Paragraph 5 of the Complaint herein, and the relation of these admissions to corresponding parts of these Crippen patent claims appears in footnotes to the Tabulation.

Katz Affid., Para. 7(c):

"[In PDX-12A, plaintiff's employees are using an 'Angle Bar' to check that the pipe is bent to the desired number of degrees."

Katz Affid., Para. 7(d) and 9, 10, 11

"Among plaintiff's [forming dies] \* \* \* are dies built with a circumferential wrap of up to 180°." (Para. 9).

Katz Affid., Para. 7(e):

"The full arcuate extent of the [plaintiff's] bend is at a radius conforming to and determined by that of the 'Forming Die'."

Katz Affid., Para. 7(f):

"[In plaintiff's photograph, PDX-1 the 'Floor Pipe' designation \* \* \* identifies one of several riding supports as thus defined."



5. In his deposition, Mr. Crippen attested to the uniqueness of plaintiff's hot-pipe bending technique:

At DTr.136-7:

Q. Did you know of any other place that was using this kind of apparatus [per Crippen DTr. testimony as to Tubeco apparatus of PDX-12A] for hot pipe bending?

A. I don't know of any other place, no.

Q. That is, besides Tubeco?

A. No.

Q. As of the time you were with Tubeco?

A. No.

Q. Or even since?

A. Not that I have seen, no.

At DTr.301:

Q. Now really, the essence of my question is: who is the knowledgeable expert, and what really did he say in regard to the hot pipe-bending equipment at Tubeco's present plant? Now, you say Carl Pipe isn't that plant at all?

A. Yes; you're right. I have had some other people say it, too. I'm trying to remember who they were; speaking of Tubeco now. Just let me think about it. Oh, yes. I have heard it by Mr. O. P. Carter of M. W. Kellogg.

Q. All right. Now, when did you hear from this Mr. Carter?

A. In '67 or '68.

Q. This was after you were employed by Tubeco?

A. This was after I had left Tubeco; yes.

Q. And what did he say?

A. Well, he made reference to Tubeco's equipment as being good.

Q. Did he say it was the best in the industry?

A. Words to that effect, yes.



6. From my investigation of the facts and circumstances of this case, including the long-standing employer-employee relation of the parties, and noting that this relationship included the same key officers\* and employees\*, coupled with the fact that Mr. Crippen has acknowledged the uniqueness of the Tubeco hot-pipe bending equipment and method, I believe ~~is~~ most reasonable and true that Mr. Wesler could have no other reaction from seeing Mr. Crippen's patent drawings, in the context of Mr. Crippen's stated expectation of payment from Tube, than that Mr. Crippen was seeking Tubeco payment for that which Tubeco owned and for years had been using. Mr. Wesler's reaction was entirely consistent with my analysis of the Crippen patent, its claims 11 and 12, the Crippen deposition testimony and the remaining affidavits in opposition to defendant's Motion to Dismiss.

7. Plaintiff's continuing business operations should, in my opinion, be held to be infringements of at least claims 11 and 12 of the Crippen patent in suit, if such claims should be held to be valid. And I respectfully submit that the circumstances present in this case establish a judicable controversy of such nature that plaintiff should be recognized by this Court as having the right to a determination of the validity vel non of the Crippen patent in suit.

SWORN and subscribed to before  
me this 1st day of August, 1973.

Carroll A. Teta  
Notary Public

Roy C. Hopgood  
Roy C. Hopgood

\* For example, Messrs. Wesler, Katz, Green, and Webber, who have executed accompanying affidavits.

CARROLL A. TETA  
Notary Public, State of New York  
No. 69-540125  
Qualified in Westchester County  
Certificate filed in New York County  
Commission Expires March 30, 1974

Complaint, Paragraph No. 5\*

5. For more than a year prior to any of the defendants' acts of which complaint is made herein, one of plaintiff's established commercial techniques for bending pipe of at least six-inches diameter comprised the following steps:

- (a) Heating the pipe to a temperature at which it is bendable;
- (b) Anchoring one end of the pipe;
- (c) Bending the pipe in a horizontal plane, to the extent of the desired number of degrees;
- (d) The bend is around the curvature faces of a continuous arced forming die which at the bending point extends substantially half way\* around the pipe circumference;

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\* The only difference between Crippen patent claim 11 and items 5(a) through (c) above is that "substantially half way" should read "approximately 180°". As to this difference, Mr. Crippen testified, at DTr.452:

Q. When you are talking about the circumference of a pipe, is it fair to say that 180 degrees is substantially half way around the pipe?

[Objection by defendants' counsel].

Q. How far around the pipe is 180 degrees?

A. Half way.

Crippen Deposition Transcript (DTr.)

Q. \* \* \* from your knowledge of things at Tubeco while you were at Tubeco -- and Carl Pipe -- plaintiff's established technique for bending -- that is the hot bending of pipe of at least six-inch diameter included the step (a) of heating the pipe to a temperature at which it is bendable? (DTr.310).

A. Yes, sir.

Q. \* \* \* did they anchor one end of the pipe?

A. Yes. (DTr.310)

Q. \* \* \* did they bend the pipe in a horizontal plane to the extent of the desired number of degrees?

A. \* \* \* Yes. (DTr.310)

Q. (at DTr.130) And the inner surface [of a bent piece of "split pipe", DTr.128, 134, 143-4] is now used, isn't it, as a recessed curve of the die to accommodate the pipe that you are going to bend; that is used for your form band around your wrap band?

A. Yes.

The Katz affidavit, at Para. 9, states: "Among plaintiff's [forming dies in use at least 10 years] \* \* \* are dies built with a circumferential wrap of up to 180°."



TABULATION A (continued)

- (e) The radius of the die-formed bending arc is equal to the radius of the bend to be made and is spaced from the bending floor; and

- \*\* (f) The pipe being bent rests on riding supports which support the pipe at an elevation which is spaced from the bending floor at substantially the same distance as the bending die is spaced from the same floor.

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\*\* This subparagraph 5(f) of the Complaint is in the language of Crippen patent claim 12; subparagraphs (a) through (e) are directed to requirements of claim 11, subject to the footnote qualification supra for subparagraph (d).

equal  
paced

Q. (at DTr.310) \* \* \* was the radius of the die-formed bending arc equal to the radius of the bend to be made?

A. (at DTr.312) It was supposed to be, yes.

Q. \* \* \*, was the die formed bending arc set up to be spaced from the bending floor?

A. Yes. (DTr.313)

Q. \* \* \* did the pipe being bent rest on riding supports?

A. Yes. (DTr.313)

Q. (at DTr.313) Did those supports support the pipe at an elevation which was spaced from the bending floor at substantially the same distance as the bending die was spaced from the floor? \* \* \* (at DTr.315) to get a good result based on what you knew at Tubeco or Carl Pipe it [the pipe being bent] had to be up high enough to sort of nest in the crotch of the forming die?

A. That would be the proper procedure \* \* \*. That's what I was trying to do at Carl Pipe.

Q. And did you, in fact, do it?

A. In some cases, yes. (DTr.315).

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----x  
TUBECO, INC., :  
 :  
Plaintiff, :  
 :  
v. : Civil Action No.  
 : 73 C 203  
CRIPPEN PIPE FABRICATION CORPORATION :  
and HENRY O. CRIPPEN, : (Judge Neaher)  
 :  
Defendants. :  
-----x

AFFIDAVIT OF HOWARD C. REED

STATE OF KENTUCKY )  
COUNTY OF JEFFERSON) ss:

HOWARD C. REED, having been duly sworn, deposes and  
says that:

1. I am a citizen of the United States of America,  
and reside at 101 South 36th Street, Louisville, Kentucky 40212.

2. I was an employee of Morgan Guaranty & Trust Co.  
at 23 Wall Street, New York, New York, from July, 1971  
to April, 1972.

3. While employed by Morgan Guaranty & Trust Co., I  
was assigned the project of developing background information  
concerning the business of pipe fabrication in general and,  
in particular, hot pipe bending, for the purpose of assisting  
Morgan Guaranty & Trust Co. in evaluating a loan application that  
had been made by Mr. Henry O. Crippen in connection with a  
business venture in that field.



4. In order to obtain some idea of what the business of pipe fabrication encompassed and to gain some information as to the industry outlook and profitability, I thought it would be desirable to visit an established company in the field. I therefore arranged to visit Tubeco, Inc. at 123 Varick Street, Brooklyn, New York, on NOT SURE and met with a Mr. Allan Wesler of that company on that day.

5. At the time I visited with Mr. Wesler at the Tubeco plant, (a) I had not met Mr. Crippen; (b) I did not know that Mr. Crippen was an ex-employee of Tubeco; (c) I had not seen Mr. Crippen's patent; (d) I did not know what Mr. Crippen's hot pipe bending process involved; and (e) I did not know that the Crippen process needed or was a patented procedure.

6. I have read pages 368-372A of the transcript of Mr. Wesler's deposition testimony, which I understand was taken in connection with a lawsuit now pending before the United States District Court for the Eastern District of New York between Tubeco, Inc. and Mr. Henry O. Crippen. Copies of the transcript pages which I have read are annexed hereto as Exhibit A.

7. In sum, Mr. Wesler's testimony regarding my visit to the Tubeco plant generally accords with my recollection at page 368, lines 17-25 and page 370, lines 14-16 and is reasonably accurate at page 372, lines 11-17, but is totally incorrect at page 369, lines 3-8, page 370, lines 17-23 and page 371, lines 7-8.

8. I have read the statement of Mr. Wesler set forth at page 369, lines 3-7 which attributes the following quoted statements to me:

"We had an appointment. He came in and he said, 'I should tell you really why I am here'. And he said, 'It is because Mr. Crippen has applied for a loan, and that Mr. Crippen said that he had a bending process that we were using under his patent and that we were paying him a fee to use it.'"

9. I unequivocally deny that I made the quoted statements set forth in Paragraph 8 hereinabove. Nor did I make any statements which in any way expressed or implied the substance of the quoted statements set forth in Paragraph 8 hereinabove. As I stated in Paragraph 5 hereinabove, at the time that I met with Mr. Wesler I did not even know that Mr. Crippen had a patent.

10. At no time during my conversation with Mr. Wesler did I reveal the fact that Mr. Henry O. Crippen had applied for a loan at Morgan Guaranty & Trust Co., as it was the established policy of Morgan Guaranty & Trust Co. to maintain in confidence all such loan applications.

11. Rather, it was Mr. Wesler who brought up the name of Mr. Crippen, not myself. This came about by Mr. Wesler asking if my visit had anything to do with a Mr. Crippen. I informed him that I could not divulge the name of our client and stated again that the purpose of my visit was only to acquire some



information about the pipe fabrication industry. Mr. Wesler told me that the client had to be Henry Crippen for it had been brought to his attention that Mr. Crippen was going to start a company of his own and that Mr. Crippen was going to use Tubeco's pipe bending process.

12. I have read the further statement of Mr. Wesler set forth at page 370, lines 14-18, which states as follows:

"As a matter of fact, the representative of the bank asked to go down on the floor with me and see the bending method. He did, and I showed it to him. And he said, 'But this is the same thing that is in the patent'."

13. While I did ask to see Tubeco's operation, I unequivocally deny that I ever stated to Mr. Wesler that "But this is the same thing that is in the patent." At no time did I make any statement to Mr. Wesler which expressed or implied that anything that I saw at Tubeco, Inc. was the same as that shown or contained in any patent. As I have stated in Paragraphs 5 and 9 hereinabove, at the time I met with Mr. Wesler I did not even know that Mr. Crippen had a patent. Indeed, even if I had seen or read Mr. Crippen's patent, I am reasonably certain that I would not have immediately recognized it upon viewing the Tubeco operation.

14. Again, at page 371, lines 7-8, Mr. Wesler attributes to me the statement that "He said that we [Tubeco] were paying him [Crippen] to use it [the Crippen patent]," which I unequivocally deny. At no time during my conversation with Mr. Wesler did I expressly state or in any way imply that Mr. Henry O.



Crippen had made any representation to myself or anyone else at Morgan Guaranty & Trust Co. that Tubeco, Inc. was paying him for the use of his patent.

Further deponent sayeth not.

Howard C. Reed

Howard C. Reed

Sworn and subscribed to before me this 1st day of February, 1974.

Kenneth H. Clay

Notary Public

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X  
TUBECO, INC., :  
 :  
Plaintiff, :  
 : Civil Action No.  
v. : 73 C 203  
 :  
CRIPPEN PIPE FABRICATION CORPORATION : (Judge Neaher)  
and HENRY O. CRIPPEN, :  
 :  
Defendants. :  
-----X

SUPPLEMENTAL AFFIDAVIT OF HENRY O. CRIPPEN

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF *New York* )

HENRY O. CRIPPEN, being duly sworn, deposes and says:

1. I am the above-named defendant and I am the same Henry O. Crippen that executed a previous Affidavit in this matter in support of defendants' Motion to Dismiss the above-entitled action pursuant to F.R.C.P. Rule 12(b)(1) and (6).

2. On November 17, 1973, my counsel and I inspected at the Tubeco plant each one of the group of five forming dies referred to in Paragraph 10 of the Katz Affidavit, filed in support of plaintiff's Opposition to Defendants' Motion, and alleged by Lyber Katz, plaintiff's manager of engineering, to have



a circumferential arc of approximately 180°. During this inspection my counsel and I took photographs of these forming dies, which are annexed hereto as Exhibits 1-6, as follows:

Exhibit 1 - Overall view of the five Tubeco dies

Exhibit 2 - 4"-20" Die (two views)

Exhibit 3 - 6"-30" Die (two views)

Exhibit 4 - 8"-32" Die

Exhibit 5 - 16"-80" Die

Exhibit 6 - 16"-96" Die

3. Also during the inspection of the aforementioned Tubeco dies, my counsel and I took the following measurements at several locations on each of the dies: (1) the distance from the top lip to the bottom lip (diameter); (2) the maximum radius from a plane connecting the top and bottom lips to the throat of the curvature face; (3) the circumferential length of the curvature face. Each of these measurements is recorded for each die in Columns 2-4, respectively, on the accompanying charts, annexed hereto as Exhibits 7-11, as follows:

Exhibit 7 - Chart of 4"-20" Die Measurements

Exhibit 8 - Chart of 6"-30" Die Measurements

Exhibit 9 - Chart of 8"-32" Die Measurements

Exhibit 10 - Chart of 16"-80" Die Measurements

Exhibit 11 - Chart of 16"-96" Die Measurements



4. Each of the annexed Exhibits 7-11 also includes at Column 5 the estimated maximum number or circumferential degrees that the measured curvature face of each of the dies would encase the outside diameter of the various pipe sizes to be bent by the die. This estimate is based upon the corresponding measurements which appear in Columns 2-4. The estimate given is the maximum possible amount of contact, because the estimate assumes a uniform, continuously formed arc between the top and bottom lips and the throat of the curvature face, which was never found to exist in any of the dies examined.

5. Finally, each of the annexed Exhibits 7-11 includes a set of comparable dimensions for a forming die constructed with a true 180° curvature face in accordance with my patented invention which, in Claims 1-10 calls for, inter alia:

"... arced forming dies having approximately 180° grooved curvature faces . . .";

and in Claims 11-12 calls for, inter alia:

"... a continuous arced forming die which at the bending point extends approximately 180° around the pipe circumference . . .".

A copy of my United States Patent No. 3,456,468 ("Crippen Patent") is also annexed hereto as Exhibit 12.

6(a). Also annexed hereto as Exhibits 13-14 are two photographs showing true, uniformly continuous 180° forming die curvature faces for several different sizes of pipe to be bent, which have been constructed for defendant Crippen Pipe Fabrication

Corporation to be used in its practice of the patented apparatus and process set forth in the Crippen Patent, Exhibit 12.

(b). In order to obtain the true, uniformly continuous, 180° arced curvature faces shown in Exhibits 13-14, it was necessary to form the dies in cast steel and thereafter machine the curvature faces under close tolerances. These manufacturing operations required the use of three different companies specializing in steel fabrication work, and the average cost of this work alone for each of the forming die curvature pieces shown in Exhibits 13-14 was on the order of \$5,000.

(c). By contrast, Lyber Katz testified that the Tubeco dies shown in the annexed Exhibits 1-6 and specifically referred to in his aforementioned affidavit were built by Tubeco's own personnel (Katz Tr. 38, 52-53) by splitting a length of pipe in half and then wrapping the one longitudinal section around a web plate to develop the desired radius of bend (Katz Affidavit, paras. 9-10; Katz Tr. 40). I estimate the cost of the piece of split pipe required to produce a forming die in this fashion to be less than \$300.

(d). In an Open House demonstration test of the hot pipe bending equipment of defendant Crippen Pipe Fabrication Corporation, utilizing a forming die having a uniformly continuous 180° arced curvature face as shown in Exhibits 13-14 annexed hereto, held on Wednesday, March 6, 1974, a man picked at random



and having no previous bending experience, produced a full area, wrinkle free bend in a pipe to the exact angle and radius desired with less than 1% flatness in the circumferential surface of the bent pipe (in comparison, the Pipe Fabrication Institute has set a flatness of 8% as the acceptable industry standard). To my knowledge, there is today no person in the pipe bending industry who is capable of achieving this result, particularly with an inexperienced bender, including plaintiff Tubeco, and it is precisely the result that I have always believed could be achieved with the apparatus and method claimed in the Crippen Patent.

7. Exhibits 1-11 and 13-14 annexed hereto are believed to clearly illustrate that Tubeco's hot pipe bending practices are far removed from that which I intended to patent and which is claimed in the Crippen Patent, Exhibit 12, and confirm the accuracy of the statements in my prior Affidavit at Paragraphs 15-19.

8(a). As demonstrated in Column 5 of each of the annexed Exhibits 7-11, and as can be clearly seen in the annexed photographs Exhibits 2-6, the Tubeco dies do not encase the pipe being bent at any uniformity and therefore do not provide any protection to the hot pipe wall against injurious faults to the pipe bend, but rather, cause distortions in the hot bent pipe. Thus, rather than encasing the pipe being bent, the Tubeco dies only contact the pipe being bent over a maximum of about 60-90°, except for the 4"-20" and 6"-30" dies, which range between about 125° and 170° at certain specific locations, but never on any uniform basis.



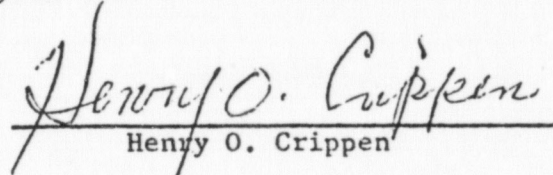
(b). None of the Tubeco dies inspected by my counsel and I remotely approaches having a "continuous arc" and none remotely approaches a continuous arc that extends about the circumferential surface of the pipe being bent over approximately 180°, as called for in my patent claims as set forth in Paragraph 5 hereinabove and in Exhibit 12 annexed hereto.

(c). In my opinion, it would be readily apparent to anyone knowledgeable in the hot pipe bending art upon a cursory visual inspection of the Tubeco dies that they are incapable of any use that would infringe the claims of the Crippen Patent.

9. As stated in my prior Affidavit in Paragraphs 6-12, and continuing up to the present time, neither defendant Crippen Pipe Fabrication Corporation or myself has enforced or threatened enforcement of the Crippen Patent, and, specifically, no suit has been instituted against anyone for infringement of the Crippen Patent.

10. In or about 1968, I visited and took photographs of hot pipe bending operations carried out by the Babcock & Wilcox Company, copies of which are annexed hereto as Exhibit 15. At that time, as Exhibit 15 attests, Babcock & Wilcox utilized a forming die in its hot pipe bending operations.

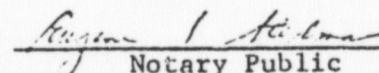
Further deponent sayeth not.

  
Henry O. Crippen

Subscribed and sworn to before me this 8th day of March, 1974.

[SEAL]

EUGENE S. STEDMAN  
NOTARY PUBLIC, State of New York  
No. 60-3819890  
Qualified in Westchester County  
Commission Expires March 30, 1975

  
Notary Public

82

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X  
TUBECO, INC., :  
 :  
Plaintiff, :  
 : Civil Action No.  
v. : 73 C 203  
 :  
CRIPPEN PIPE FABRICATION CORPORATION : (Judge Neaher)  
and HENRY O. CRIPPEN, :  
 :  
Defendants. :  
-----X

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by and between  
counsel hereto on behalf of the respective parties with respect  
to defendants' pending motion to dismiss that:

1. Neither party shall take further discovery;
2. Plaintiff shall not be required to identify those  
customers alleged to have telephoned plaintiff's president,  
Mr. Allan B. Wesler, concerning the Crippen patent and questioning  
its effect upon them and upon the operations of plaintiff; and
3. Plaintiff, in support of its opposition to  
defendants' motion to dismiss, shall not rely upon any such alleged  
conversations between plaintiff and its customers as evidence of  
plaintiff's apprehension that it or its customers would be sued  
for infringement of the Crippen patent, or as evidence that  
plaintiff or its customers would suffer loss of business or other



economic harm as a result of the Crippen patent; plaintiff shall not rely upon any customer's apprehension that it would be sued for infringement of the Crippen patent as a basis for plaintiff instituting this lawsuit; and plaintiff shall not rely on the alleged fact that such conversations took place as a basis for plaintiff instituting this lawsuit; provided, however, that nothing herein shall be deemed to controvert the fact that defendants did visit or call upon numerous potential customers, some of whom were known by defendants to be customers of Tubeco, advising them of the Crippen patent and the formation of defendant Crippen Pipe Fabrication Corporation, and seeking orders for business.

SANDOE, HOPGOOD & CALIMAFDE

Dated:

*January 7, 1974*

By

*[Signature]*

Attorneys for Plaintiff  
60 East 42nd Street  
New York, New York 10017  
(212) 986-2480

MORGAN, FINNEGAN, DURHAM & PINE

Dated:

*January 8, 1974*

By

*[Signature]*

Attorneys for Defendants  
345 Park Avenue  
New York, New York 10022  
(212) 758-4800

SO ORDERED:

U.S.D.J.



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Crippen

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are outside the State of New York.

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THE WITNESS: May I go back a little further

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and --

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MR. FOLEY: Just a moment, please.

6

THE WITNESS: Sure.

7

MR. FOLEY: You are reading that document --

8

I just glanced at it -- and I fail to see what that

9

document has to do with sales that have been made

10

by Crippen Pipe Fabrication Company.

11

MR. HOPGOOD: This has to do with sales

12

commitment. I didn't say it was sales.

13

Q Will you please answer the question?

14

MR. FOLEY: Subject to the objection that

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it is irrelevant, immaterial and incompetent for

16

the purposes and issues for which we are here today,

17

I object for the record.

18

(Addressing the witness.) You may go ahead

19

and answer the question.

20

THE WITNESS: I just wanted to say, first of

21

all, that you read over those sales commitments,

22

and --

23

Q I will show you where it is, right here, this

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paragraph (indicating).

25 A

These are not firm sales commitments. These are

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Crippen

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2 letters of intent to award sales to Crippen. They are not  
3 firm commitments.

4 Q All right. Then, are you telling me that all  
5 of them were merely letters of intent?

6 A That's what they were.

7 Q And were they letters of intent in the context  
8 of a particular job, --

9 A No.

10 Q -- or merely like putting you on the list of  
11 suppliers?

12 A If Crippen couldn't meet their requirements from A  
13 to Z -- if Crippen could be competitive on time deliveries,  
14 and this plant was set up as such to satisfy inspectors  
15 who came to inspect my plant -- you see, these letters  
16 were contingent on other conditions, not just to say,  
17 "We're going to give Crippen some work."

18 Q I see. Now I would still like to know, though,  
19 whether any of these companies mentioned in that paragraph  
20 are out of the State of New York?

21 MR. FOLEY: If you know.

22 A Yes.

23 Q Which ones?

24 A Combustion Engineering -- well, no, they're not in  
25 New York.



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Crippen

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2 York, Livingston and Dansville. And Riley Stoker was in  
3 Rochester.

4 The Lummus Company was just only through letters. I  
5 didn't meet with them at all.

6 Q You haven't given me any contacts outside of  
7 the State of New York; perhaps through correspondence.  
8 Does that mean that you yourself did not go out of the  
9 State of New York?

10 A Yes, I did go out of the State of New York. I said  
11 I -- well, Riley Stoker is in Worcester, Massachusetts.

12 Q Pardon? I didn't understand that.

13 A I said I went to Foster, Wheeler in New York,  
14 Livingston and Dansville; Livingston, New Jersey.

15 Q Livingston, New Jersey?

16 A Yes.

17 Q And Dansville is in New York?

18 A New York.

19 Q I see. All right. And Foster, Wheeler was  
20 Livingston, New Jersey?

21 A Foster, Wheeler was Livingston, New Jersey, yes.  
22 New York City and Dansville, New York.

23 Q And Riley Stoker was Worcester, Massachusetts?

24 A Yes.

25 Q Combustion Engineering is also located up in



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2 calls. I never met anybody from Lummus; I have only  
3 talked to people at Lummus. Like Allegheny Power, I  
4 never met the man from Allegheny Power. It was just a  
5 phone conversation.

6 Q Where are they located?

7 A They're located in Pennsylvania.

8 MR. STEWART: I believe that actually they  
9 are in New York, but they can be located out in  
10 Pennsylvania, perhaps.

11 Q Did you have correspondence with Allegheny  
12 Power?

13 A I had correspondence, yes.

14 Q When I say "you", I would like to know, is  
15 it you who were involved in the correspondence, or some-  
16 body acting for the company other than you?

17 A I myself called the president of Allegheny Power.

18 Q And where did you call him?

19 A I called him in Pennsylvania; I think it was  
20 Pennsylvania.

21 Q I see.

22 How about General Electric?

23 A I called General Electric in Schenectady, New York.

24 Q How about Mobil Oil?

25 A Mobil Oil. I met people from Mobil Oil at a

1  
2 to look at them.

3 MR. FOLEY: Sure.

4 (Addressing Mr. Paulson) Bob, do you want  
5 to tell Mr. Hopgood what you have?

6 MR. PAULSON: Mr. Hopgood, I do not have any  
7 specific letters with respect to the companies  
8 listed in the JMO Bulletin. I made no particular  
9 attempt to look for those.

10 But what I have brought along are typical  
11 letters that were written to various companies  
12 with which they were trying to solicit, or trying to  
13 develop some sales efforts with.

14 I have samples of those. I have a sample of  
15 a brochure that usually accompanied the letters,  
16 as well as a report that is termed a Confidential  
17 Report that accompanied the letter. And we would  
18 be prepared to produce those on a voluntary basis.

19 I want to make it clear that we do not feel  
20 they are being produced in response to the Rule 34  
21 Document Requests, however.

22 MR. HOPGOOD: Whatever you are referring to,  
23 I would like to see them.

24 MR. PAULSON: I will produce them as being  
25 typical letters to prospective customers. And I have

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blanked out the names of the customers, since it seemed to me that that was not necessary to the inquiry at hand.

MR. HOPGOOD: Perhaps, for present purposes, it would be all right if you would at least stipulate that at least some of these were interstate.

MR. FOLEY: Excuse me. Off the record.

(Discussion off the record.)

MR. FOLEY: Yes. We will stipulate to that, Mr. Hopgood.

MR. HOPGOOD: May I see the documents?

MR. PAULSON: I have just one other explanatory note, and that is that the document that I have referred to as a Confidential Report does have material in it that relates to the financial structure of the defendant, Crippen Pipe Fabrication Corporation, and projected sales and projected numbers of employees, and other costs and expenses, which did not seem relevant to this inquiry. And I have blanked that out as well.

But, with those comments, that is what we are prepared to produce.

MR. HOPGOOD: Without waiving our right to request other detail, I would certainly like to see



1  
2 what you are willing to produce.

3 MR. PAULSON: All right.

4 MR. HOPGOOD: As you give these to me, if  
5 there is any particular order to them, I would  
6 like to follow a reasonable order, and put a mark  
7 on each one so that we have it identified.

8 MR. PAULSON: Right. The first item I am  
9 handing you is a brochure on Crippen Pipe Fabrication  
10 Corporation (handing).

11 MR. HOPGOOD: Let us call that brochure  
12 PDX Exhibit 4 for identification.

13 (Document described as brochure on Crippen  
14 Pipe Fabrication Corporation was marked PDX  
15 Exhibit 4 for identification, as of this date.)

16 MR. HOPGOOD: I will mark them all first.

17 MR. PAULSON: Right. The next item I am  
18 going to give you is the Confidential Report of  
19 Crippen Pipe Fabrication Corporation having a  
20 date on it of June, 1971. In this report there  
21 are some items blanked out that relate to the  
22 financial structure of the company (handing).

23 MR. HOPGOOD: Thank you. This will be  
24 marked as PDX Exhibit 5 for identification.

25 (Document described as Confidential Report of

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Crippen Pipe Fabrication Corporation, dated June, 1971 was marked PDX Exhibit 5 for identification, as of this date.)

MR. PAULSON: The next item I have is a letter which shows a date on it of August 27, 1971, which is signed by Henry O. Crippen (handing).

MR. HOPGOOD: We will mark this letter just identified by Mr. Paulson as PDX Exhibit 6 for identification.

(Letter having date of 8/27/71 as above described, was marked PDX Exhibit 6 for identification, as of this date.)

MR. PAULSON: I have a further letter having the date on it of May 25, 1971, indicating the sender of the letter as being Bruce Wallace, general manager of the company (handing).

MR. HOPGOOD: This letter dated May 25, 1971 will be marked as PDX Exhibit 7 for identification.

(Letter dated 5/25/71, as above described, was marked PDX Exhibit 7 for identification, as of this date.)

MR. PAULSON: I produce a further letter

1  
2 having a date on it of January 13, 1971, and  
3 showing the sender to be Bruce Wallace, general  
4 manager of the corporation (handing).

5 MR.HOPGOOD: This letter of January 13, 1971,  
6 is marked as PDX Exhibit 8 for identification.

7 (Letter dated 1/13/71, as described, was  
8 marked PDX Exhibit 8 for identification, as of  
9 this date.)

10 MR. PAULSON: And I produce a final letter  
11 dated November 27, 1972, showing the sender to  
12 be Henry O. Crippen (handing).

13 MR. HOPGOOD: I would like to mark this  
14 letter dated November 27, 1972, as PDX Exhibit  
15 9 for identification.

16 (Letter, as described, dated 11/27/72,  
17 was marked PDX Exhibit 9 for identification, as  
18 of this date.)

19 MR. FOLEY: Off the record.

20 (Discussion off the record.)

21 Q Mr. Crippen, do you have copies of the  
22 documents which have just been marked?

23 MR. FOLEY: We have copies of the documents,  
24 and we can use our copies, Mr. Hopgood.

25 MR. HOPGOOD: All right.



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First, will you please satisfy yourself as

to whether the documents just produced, and marked PDX

Exhibits 4 to 9 for identification, are representative

of what you and your company sent to other companies,

consistent with what you have been saying to these companies

in the exhibit identified as PDX Exhibit 2?

MR. FOLEY: Off the record.

(Discussion off the record.)

MR. FOLEY: Read the question, please.

(Question read.)

A The question you are asking me now, is did I say

the same thing to other companies?

Q No. I am asking you whether these exhibits,

PDX Exhibits 4 to 9 for identification, are representative

of what you communicated to the companies mentioned in

Exhibit 2?

MR. FOLEY: Look at them.

THE WITNESS: Starting here?

MR. FOLEY: Yes. Off the record.

(Discussion off the record.)

Q I will be glad to amend the question if you

have trouble identifying those particular companies in

your mind.

MR. FOLEY: Off the record.

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(Discussion off the record.)

A So many things happened along the line that it's hard for me to -- for instance, here we are speaking of four buildings; and along the way, in doing this, at one time I had one building.

So I can't say that I told everybody that we had the four buildings that I speak of here.

Q When you say "four buildings", you are talking about what you see in Exhibit 4, is that right?

A No. It's another building here, a control room, which you do not see here.

Q I don't know if you understand what I am trying to ask you. I am trying to find out whether it is fair to say -- and I am not trying to put something in your mouth, you understand --

A I understand --

Q I am trying to understand what these documents are that we have just marked.

A Yes.

Q I had understood from your counsel that they are supposed to be representative of things that your company sent out to other companies, perhaps companies like those listed in PDX Exhibit 2.

If you can't remember that, I am perfectly willing

2 to have you say that it went to companies which you are  
3 not sure of, but --

4 A Well, my recollection of it is that it was just  
5 about a model letter that went to all companies. That  
6 would be my recollection of it.

7 Q Which includes the ones that are listed in  
8 PDX Exhibit 2?

9 A Right.

10 Q Which, therefore, includes interstate --

11 A Yes.

12 Q -- mailings?

13 A Right.

14 Q Would that apply to all of these communications  
15 and documents of PDX Exhibits 4, 5, 6, 7, 8 and 9 for  
16 identification?

17 A Do you mean whether those documents refer to dif-  
18 ferent companies?

19 Q No. I am talking about whether you sent them  
20 to an equal variety of companies. Let us take them one  
21 at a time.

22 MR. FOLEY: I was just going to suggest that.

23 MR. HOPGOOD: Off the record.

24 (Discussion off the record.)

25 Q Let us take that first one, which has been



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marked Exhibit 4.

A All right. This is just about what would have been sent to all companies.

Q Interstate mailings as well?

A Interstate, New York; all companies.

Q I will ask you then as to each of these exhibits.

A All right.

Q As to Exhibit 5, which is the June, 1971 Confidential Report, was that sent to all of those companies?

A Yes, I would say it was.

Q How about Exhibit 6, the August 27, 1971 letter?

A Yes.

Q How about Exhibit 7, the May 25, 1971 letter?

A Yes.

Q How about Exhibit 8, the January 13, 1971 letter?

A Yes.

Q How about Exhibit 9, the November 27, 1972 letter?

A Yes.

Q Now, Mr. Crippen, I notice that, of course, these have different dates.

2 A Yes.

3 Q Did they all go out at once, or did they go  
4 out over a period of time?

5 A They went out over a period of time.

6 Q This November 27th letter is just a form  
7 letter that went out as you could conveniently get it out,  
8 is that it?

9 A Yes.

10 Q On and after the date indicated?

11 A Right.

12 Q Let us take Exhibit 9.

13 A Yes.

14 Q It seems to me that this is saying that it  
15 is forwarding something. It has a notation of enclosure.

16 A Right; brochures.

17 Q What is meant by "brochures"? Is that one  
18 of these documents?

19 A It's this one, here (indicating).

20 Q What you are referring to is Exhibit 4?

21 A Right.

22 Q Which went with Exhibit 9?

23 A Right.

24 Q That gives us, then, a date for Exhibit 4,  
25 doesn't it? Or did it go with earlier letters as well?

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2 A I can't answer that.

3 Q Let us find out by asking more questions.

4 A Okay.

5 Q At least, it went out with Exhibit 9, is  
6 that right?

7 A Yes. As I sit here and say to you 'yes', this went  
8 out at a given time. As I said to your before, I was  
9 not the one that prepared these letters. I was not the  
10 one, and I do not know when everything went out. There  
11 were a million things to do, and I was trying to ride  
12 herd on everything that needed to be done.

13 I have people who I can trust to send things out.  
14 And I don't have the capability of trying to do all that  
15 Crippen has to do. And so, I leave things up to my per-  
16 sonnel.

17 But I'm responsible for what they do, and I trust  
18 them.

19 I am not trying to say I don't approve of what has  
20 gone out. The only thing I am trying to say to you is  
21 that these documents, I would never have read all of them,  
22 period. And if I had read them all, trying to understand  
23 each and everything that is in there, Crippen would never  
24 have gotten started.

25 So on some of these things I had to trust to my



1  
2 people to do them.

3 MR. FOLEY: All that Mr. Hopgood is asking you  
4 is if you know or if you don't know. If you  
5 don't know, just tell Mr. Hopgood, and if he wants  
6 to he can examine the person that does know.

7 THE WITNESS: All right.

8 Q But I notice that this one, PDX Exhibit 9,  
9 did have your signature?

10 A Yes.

11 Q So that you did at least know that one?

12 A Yes.

13 Q And this one, PDX-4, the booklet, has your  
14 signature?

15 A Yes.

16 Q So that at least you know about that one?

17 A Right.

18 Q I have quickly read this January 13, 1971  
19 letter, which is PDX Exhibit 8. And I don't see that it  
20 carried any other enclosure.

21 Do you happen to know?

22 A No, I don't know.

23 Q I am now looking at PDX Exhibit 7, the May 25,  
24 1971 letter, --

25 A Yes.

1

2 Q -- and I see that it notes enclosures.

3 A Yes.

4 Q Could you help us identify what they were?

5 A This would have enclosed our Confidential  
6 Report.

7 Q That being PDX Exhibit 5?

8 A That's the big one, Exhibit 5.

9 Q So that Exhibit 7 and Exhibit 5 go together?

10 A Exhibit 7 and 5, yes.

11 Q Now, the last one that is left is Exhibit 6,  
12 a letter of August 27, 1971.

13 It notes that it has enclosures, and it looks as  
14 though it is signed by you.

15 A Yes.

16 Q What was the enclosure?

17 A This would have included the Confidential Report.

18 Q Exhibit 5 also?

19 A Right, Exhibit 5.

20 Q Did these letters go to particular kinds of  
21 people, Exhibit 6 and Exhibit 7?

22 A When you say particular kinds of people --

23 Q Or companies?

24 A Well, this would have gone to a particular company,  
25 yes.

1

2 Q Well, are they soliciting financial support,  
3 or are they soliciting pipe bending business?

4 A Whether they were soliciting pipe fabrication  
5 work, or whether they were soliciting finances -- this  
6 would have been for sales.

7 Q Which is Exhibit 6?

8 A Yes.

9 Q How about the other one, Exhibit 7?

10 A I would say this would be for sales.

3

11 Q Now, as to this enclosure which has been  
12 marked PDX Exhibit 5 for identification, --

13 A Yes, sir.

14 Q -- how many copies of that were made?

15 A I really couldn't tell you.

16 Q Is it in the order of 25, 50, 100; just  
17 roughly?

18 A I really cannot answer that question. I really  
19 don't know.

20 Q Do you have any idea of how many different  
21 companies or individuals were contacted through your  
22 letter of PDX-6?

23 A Well, most of the people that would have been con-  
24 tacted through this letter would have had a Confidential  
25 Report.



1

2 you say you would change that to "minimizes", is that  
3 right?

4 A "Minimizes" is right.

5 Q And that is the first change you would make?

6 A Yes, right, that's the first.

7 Q And then, I have noted that you referred to  
8 having set up shop with 13 men, etc., and having built  
9 it up to 200 employees.

10 And you say that isn't so?

11 A That isn't so, no. I did not say that.

12 Q Do you have a number that you would say is  
13 so?

14 A I did not give any number that I built my company  
15 to.

16 Q Did you say that you built it at all?

17 A I said that I started Carl Pipe Fabrication Corpora-  
18 tion with high pressure pipe bending, which the company  
19 is now called Tubeco.

20 Q What do you mean by "high pressure"?

21 A I mean I said that I started high pressure hot pipe  
22 bending at Carl Pipe Fabrication Corporation.

23 Q I would like to understand what "high pressure"  
24 means in the framework of what you have just stated, if  
25 you can tell me that.

1

2 A That's right.

3 Q All right. Did you change anything else in  
4 this?

5 A Yes. I changed letters of intent from commitments.

6 Q I see. You think it is wrong to have said  
7 "commitments"?

8 A Well, I said this earlier. They were not firm  
9 commitments; they were only letters of intent, provided  
10 Crippen met conditions A through Z. "Commitment" means  
11 "This is yours."

12 A letter of intent means it's yours if you can  
13 reach certain conditions or satisfactions of the company.

14 Q But if I understood your previous testimony  
15 correctly, it was that should you meet those conditions,  
16 the company stood committed to a certain number of  
17 dollars with Crippen Pipe Fabrication?

18 A Well, that was the intent. I can't say "committed".  
19 It was intended to do this.

20 Q It was so stated in the letter, wasn't it,  
21 the number of dollars?

22 A Yes, they named a dollar amount.

23 Q Thank you.

24 Then that represents your present exception to the  
25 statements in this article, is that right?

1

2

THE WITNESS: Will you repeat that again?

3

MR. HOPGOOD: Read the question, please.

4

(Question read.)

5 A

Yes.

6

Q Exhibit 10?

7 A

Yes.

8

Getting back to the letters of intent, some of the people said to me -- some of the finance people said to me, "Crippen, those letters of intent are really not firm commitments. How do we know that those letters of intent will hold up once you really get in business?"

13

I don't recall who said it. So I thought about this, too; and I called back a couple of people; and the response I got was that it was not the letter of intent, but the intent behind the letter.

17

"We do intend to award you pipe fabrication if you meet certain things".

19

So the letters were good. But the intention behind the letters is really what counted.

20

21

Q As I remember, Mr. Crippen, you said that the whole article was based on somebody from the newspaper coming to your place and interviewing you?

23

24 A

Right.

24

25

Q Were you the primary person interviewed?



1

2 Q So that you dealt with both of them?

3 A Yes.

4 Q Did you make any effort to answer this letter  
5 of January 17, PDX Exhibit 11?

6 A No.

7 Q Were you advised not to answer it?

8 MR. FOLEY: I object to the question. It  
9 is attorney-client privilege. He said it was  
10 based upon conferences with his attorney.

11 Q Before I leave PDX Exhibit 10, I would like  
12 you to identify the New York firm referred to in that  
13 paragraph of the article of Exhibit 10 where you set up  
14 shop with 13 men, and built it up. What firm is that?

15 A This firm was Carl Pipe.

16 Q The predecessor name of the plaintiff corpor-  
17 ation?

18 A Tubeco, right.

19 Q You have told me, after carefully going through  
20 this article right now, what exceptions you would presently  
21 take.

22 I want to know, did you at that time of first seeing  
23 this article take any exceptions?

24 A I did not; not that I recall, no.

25 Q Did you have any further contact with the

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A F T E R N O O N      S E S S I O N

3

May 15, 1973  
1:40 p.m.

4

5 H E N R Y      O .      C R I P P E N      ,      the

6      witness, resumed, and testified further as

7      follows:

8 EXAMINATION (CONTINUED)

9 BY MR. HOPGOOD:

10      Q      Mr. Crippen, my understanding from your

11 testimony this morning was that you were telling us

12 about your use of literature, your correspondence with

13 the various other companies that might be potential

14 customers.

15      And you were telling us about your company trying

16 to line up commitments; letters of intent you called them.

17 A      Right.

18      Q      In PDX Exhibit 2 for identification, something

19 is said about other kinds of companies, like insurance

20 companies or banks, which were also involved.

21      I will ask you to look at the bottom of the first

22 column of Exhibit 2 (handing).

23 A      Yes?

24      Q      Was this another category of company to which

25 you made approaches in trying to get this company going?

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2

(The pending question was read.)

3

A I would have to say yes, that in the overall of  
4 our dealings with the banks and with the finance people,  
5 the patent was involved.

6

Q Can you recall whether in any of these  
7 meetings with the banks the subject of Tubeco came up;  
8 that is, the plaintiff?

9

A I don't recall.

10

Q Do you recall specifically at any time ever  
11 saying to a member of a bank within this context that  
12 you had licensed Tubeco, and were to collect royalties  
13 for Tubeco's use of your patent?

14

A No; definitely no.

15

Q Do you recall ever saying to anybody that  
16 you intended to collect royalties by reason of Tubeco's  
17 use of your patent?

18

A Never.

19

Q Do you recall saying or suggesting that you  
20 had sold the patent, or had licensed it to Tubeco?

21

A No.

22

Q My question is designed to apply to all banks,  
23 whether or not they became backers. And is your answer  
24 still the same?

25

A I never said anything to a bank or banks about



1

2 Tubeco licensing the patent, about Tubeco's intention  
3 to license the patent. I never said this to any banks  
4 or financing people, period.

5 Q How about others outside the circle of banks  
6 and finance people?

7 A I never said this to anybody.

8 Q Do you know of any such statements being  
9 made on behalf of Crippen Pipe Fabrication Corporation?

10 A No.

11 Q In your discussions with the banks or  
12 financial people, --

13 A Yes, sir.

14 Q -- did you develop for them or with them  
15 your intentions or your manner of using the patent,  
16 PDX Exhibit 3 for identification?

17 A Did I discuss with them my --

18 MR. HODGOOD: Read that back, please.

19 (The pending question was read.)

20 A I discussed the use of the patent, yes.

21 Q Can you tell us how this discussion went?  
22 I mean the manner of use of the patent?

23 A Well, I explained that I had a patent that was a  
24 unique procedure for hot pipe bending.

25 Q Had you ever constructed the device described

2 A Yes, I recognize by the surroundings that it's  
3 at Tubeco.

4 Q And do you recognize it as a piece of hot  
5 pipe bending apparatus --

6 A I do.

7 Q -- at Tubeco?

8 A Yes, I do.

9 Q And as of the time that you were employed  
10 there?

11 A Well, I can't say this actual piece of equipment  
12 was there, but equipment of this type.

13 Q Thank you.

14 A Yes; of this type.

15 Q And maybe it was at Carl Pipe. I didn't  
16 mean to mislead you there.

17 A Not this particular piece of equipment, not this,  
18 but equipment similar to this; but not this particular  
19 piece of equipment.

20 Q I was trying to clarify it for you. I  
21 didn't mean it was necessarily at Tubeco. It might have  
22 been at Carl Pipe.

23 We are not drawing a distinction there, are we?

24 A No.

25 Q I am talking about as of the time that you were

1  
2 facts of the situation, instead of a hypothetical  
3 situation.

4 MR. HOPGOOD: I am only going for his recol-  
5 lection of what was in practice at Tubeco.

6 MR. FOLEY: All right; I have no objection  
7 to that.

8 MR. HOPGOOD: That is all I am going for.  
9 I am not asking whether he ever saw this piece of  
10 pipe before.

11 MR. FOLEY: Off the record.

12 (Discussion off the record.)

13 Q By the way, so that there won't be any confusion,  
14 we have been referring to a xerox copy of the photograph  
15 that was marked PDX-12. Why don't we call the marked-up  
16 xerox PDX-12-A?

17 A Okay.

18 (Xerox copy of FDX Exhibit 12 was marked  
19 PDX Exhibit 12-A, as of this date.)

20 Q You have referred to bends, and I want to be  
21 sure that we are talking about one specific bend, in order  
22 to clarify it.

23 Let me ask that question again, all right?

24 A Sure.

25 Q Every time -- this is going to your recollection



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So as I say, in many cases -- I'm sure Lyber will bear this out -- there were imprints of this curvature piece on the pipe where, if it had a direct center, and this were smooth, you wouldn't have gotten that, because it's riding too high or riding too low in many cases.

Q Did you ever get a good job or didn't you?

A I'm sure they did.

Q So that --

(Interposing) I would hope so.

Q So that these must have been right to that extent, wouldn't you say?

A Right. Well, anytime you get a good job things have to be right.

Q And in general they were pretty good at Tubeco, weren't they?

A In the sense of my saying they were good, no.

Q Are you telling me that they never were any good at Tubeco?

A I didn't say they weren't any good. When I speak of "good" as opposed to "all right", that takes on a different meaning to me. When I say good, to me that would mean almost flawless.

Q Did you know of any other place that was using this kind of apparatus for hot pipe bending?

1

2 A I don't know of any other place, no.

3 Q That is, besides Tubeco?

4 A No.

5 Q As of the time that you were with Tubeco?

6 A No.

7 Q Or even since?

8 A Not that I have seen, no.

9 Q Turning your attention back to this former,  
10 forming die again, I see that there is some kind of  
11 curve, a shaping to the end (indicating).

12 A Yes.

13 Q Can you tell me your recollection of the  
14 shaping?

15 A There was no particular shaping at the end of the  
16 former. It was just cut off.

17 Q That isn't a square cut, though, is it?

18 A I'm saying I don't know when this picture was made.  
19 This picture could have been made for this particular  
20 purpose, so I mean --

21 Q I'm only asking if you remember at Tubeco  
22 any kind of formation on the forming dies?

23 A No.

24 Q For example, part of an ellipse being cut  
25 down at the end?

2 A I had one or two -- I really don't recall how many  
3 contacts I had with Tubeco after the application was  
4 filed. But I did have more than one, I'm sure.

5 Q Did you advise Mr. Wesler or Mr. Katz, as  
6 you cannot recall which specific individual you spoke to,  
7 that you had the application pending?

8 A Yes.

9 Q Did you advise him, as you have indicated  
10 today, those features which make it an economic benefit,  
11 in your mind?

12 A Yes.

13 Q Did you advise him how you expected to be  
14 recompensed, paid for the use of your idea?

15 A No.

16 Q Did you tell him that you expected to be,  
17 or were you going to give it to him as a gift?

18 MR. FOLEY: I think there are two questions  
19 in one there.

20 (Addressing the reporter) Will you read  
21 the question?

22 (Question read.)

23 MR. LIEBERMAN: They are alternatives.

24 Q Did you tell him that you were giving it to  
25 him as a gift?



1

2 A No, I did not.

3 Q Was the purpose of the conversation with him  
4 that if they used whatever it was, that you expected to  
5 be paid for it?

6 A Well, I left it more or less to Mr. Wesley to  
7 dictate the terms of how he wanted to use my innovation  
8 in hot bending.

9 Q And as to the amount that you would be paid?

10 A No, I didn't stipulate, or he didn't stipulate  
11 any amount.

12 Q So, I didn't mean that. But did you leave it  
13 up to him as to the amount that you would be paid?

14 A Well, more or less yes.

15 Q But nevertheless, you would have expected to  
16 be paid?

17 A Oh, yes.

18 Q Was the purpose of the conversation between  
19 you, the substance of the conversation between you, that  
20 if he used that which you offered, you would be in some  
21 manner paid for it?

10 22 A Well, that was, I'm sure, both of our understanding.  
23 I don't recall the words that were spoken, but this was  
24 the purpose of our conversation. But we didn't get into  
25 any terms, or what have you.

1  
2 Q Now, there came a time when you approached  
3 Tubeco after the patent had issued?

4 A Yes.

5 Q And do you recall whom you contacted at  
6 that time?

7 A It must have been Al.

8 Q Mr. Wesler?

9 A Right.

10 Q Do you recall approximately when in time that  
11 was?

12 A That was in 1970.

13 MR. LIEBERMAN: Off the record.

14 (Discussion off the record.)

15 A (Continuing) My last contact with Mr. Wesler, as  
16 I recall it, was in 1970.

17 Q This was after the patent had issued?

18 A After the patent had issued, yes.

19 Q Did you at that point in time show him the  
20 patent?

21 A I did.

22 Q And was it upon the same terms and conditions  
23 as you previously indicated with respect to your  
24 application, that if he used it you would expect to be  
25 recompensed? Was that the understanding?

(over)

1

2 A Well, that would have been the purpose of the  
3 meeting; but we didn't get to that. After the meeting  
4 we had a discussion --

5 Q Let us discuss what happened at the meeting  
6 before we get to that.

7 MR. FOLEY: Say what happened, not what  
8 the purpose was.

9 Q Let us talk about what happened at the meeting.

10 A Yes.

11 Q Where was the meeting held?

12 A In Mr. Wesler's office.

13 Q Who set up the meeting?

14 A Mr. Wesler.

15 Q And whose was the initial call which instituted  
16 the meeting? Was it from you to Mr. Wesler or from Mr.  
17 Wesler to you?

18 A On this particular occasion, I don't remember whether  
19 it was my calling him or his calling me. I know he called  
20 me in reference to this, but I honestly don't remember  
21 now.

22 Q When he called you with reference to this,  
23 did he return a call that you had made to him, or did  
24 he institute the call in the first instance?

25 A He returned my call.



1

2 Q Okay. With reference to the meeting, as best  
3 you can recall, when did it occur in point of time? Was  
4 it fall, spring, summer?

5 A Oh, boy. I honestly don't remember.

6 Q In whose office did it take place?

7 A In Mr. Wesler's office.

8 Q As best you recall, how did the meeting start?

9 A Well, the meeting started with several persons  
10 present, Mr. Wesler, Mr. Arthur Green, Mr. Lyber Katz,  
11 and a couple of other gentlemen. I don't recall who they  
12 were.

13 Q As best you recall, what did you state at that  
14 meeting?

15 A I started to state some of the features that were  
16 involved --

17 Q Such as?

18 A -- in the patent.

19 Q Such as?

20 A Such as compound bending, making bends with no  
21 straight pipe in between the bends.

22 Q Yes. Any others?

23 A Clock and counterclockwise bending.

24 Q Yes?

25 A And many other economical features.

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Q Mr. Lieberman is out of the room examining  
3 some documents which your attorney produced. And I  
4 have the feeling from what has been said that they are  
5 something like the exhibits that were marked yesterday  
6 as PDX Exhibits 6 to 9.

7

MR. FOLEY: Yes.

8

Q Is it fair to call those kinds of letters that  
9 went out to various people and companies a marketing  
10 effort, or part of a marketing effort?

11

A I guess it would be fair to say that.

12

Q Thank you.

13

In PDX Exhibit 4 which we marked yesterday -- again  
14 the pages aren't numbered -- it opens up with what looks  
15 like a letter from you, is that right?

16

A Yes.

17

Q There are four paragraphs to it. The second  
18 paragraph begins by referring to the Crippen patented hot  
19 bending apparatus, is that right?

20

A Yes.

21

Q When it says that it refers to the patent,  
22 PDX Exhibit 3, that we identified yesterday, doesn't it?

23

A Yes, it does. I have a reference here --

24

Q I want you to look at it and see (handing)?

25

A Yes. It does make a reference to this patent.

1

2 A Yes.

3 Q This is a page which has a drawing, is that  
4 right?

5 A Yes.

6 Q In fact, there are several pages with drawings  
7 of layouts, to adopt what I think in your language -- you  
8 have been educating me -- of compound bends.

9 A Right.

10 Q There are three sheets of drawings here  
11 (indicating).

12 A Right.

13 Q Where do these drawings come from?

14 A I'm trying to think of where those drawings came  
15 from. I had them drawn up, but I don't recall who did  
16 the drawings.17 Q You had them done for you pursuant to your  
18 instructions?

19 A Yes.

20 Q And did you give this fellow anything to go  
21 by in making these drawings?22 A Wait a minute, wait a minute. These drawings were  
23 adopted from pipe having been fabricated, not bend-formed,  
24 but fabricated; and they were made to the configurations  
25 here. The drawings were made from the wires.



1

2 Q And where did the drawings come from for  
3 the pipe that had been fabricated?

4 A Where did these drawings come from?

5 Q No. You said they were made from drawings  
6 for pipe that had been fabricated, if I understand you,  
7 right?

8 A Yes.

9 Q I want to know where the drawings for the  
10 pipe that had been fabricated came from?

11 A This drawing here, the pipe had been fabricated at  
12 Tubeco (indicating).

13 Q You are talking about the first sheet?

14 A Yes.

15 Q Following the text under the heading SPECIAL  
16 BENDING CAPABILITIES?

17 A Yes.

18 Q Is the same true for all three, that they all  
19 came from Tubeco?

20 MR. FOLEY: All three of what?

21 Q All three sheets of drawings, the drawing  
22 from which these were transcribed?

23 A The fabricated pipe, not the drawings, came from  
24 Tubeco.

25 Q Do I understand you to tell me that the

1

2 fabricated pipe which conformed to the drawings of these  
3 three sheets of drawings came from Tubeco?

4 A I said the first drawing here (indicating) --

5 Q Yes?

6 A -- was from a fabricated piece at Tubeco, in which  
7 a wire was made in conformity to the fabricated piece.

8 Q What do you mean when you say "a wire was  
9 made"?

10 A Like this, in conformity to the fabricated piece at  
11 Tubeco (indicating).

12 Q Is this some practice you have of making wires  
13 for a particular pipe that has been fabricated?

14 A No.

15 Q When was the wire made?

16 A Dates I can't recall; or time I can't recall.

17 Q But while at Tubeco?

18 A While at Tubeco, yes.

19 Q And is this something you retained?

20 A Something -- what do you mean?

21 Q That you kept for yourself?

22 A No.

23 Q I am sorry. I just plain don't understand.  
24 I want to know the facts.

25 Obviously, there was some pipe made at Tubeco, --

1

2 A Right.

3

Q -- which was something like this shape that  
4 you had in the drawing?

5

A Right.

6

Q It is hard for me to believe that -- you tell  
7 me whatever the fact is, as you remember it -- that that  
8 wasn't made without a drawing.

9

Wasn't it the practice at Tubeco to make drawings  
10 or to have a drawing from a customer to show what the  
11 pipe is supposed to look like?

12

MR. FOLEY: I think that what you believe  
13 or don't believe, Mr. Hopgood, is not relevant.  
14 I think you should ask him how these drawings  
15 came about.

16

MR. HOPGOOD: That is what I am trying to  
17 ascertain.

18

Q How did they come about?

19

A Well, the drawings -- I don't know -- I really don't  
20 recall who did the drawings for me.

21

Q When did he do the drawings for you? I  
22 really want to know about all three, but if you want to  
23 do one at a time, I will start with the first one.

24

A I'm trying to give you the date, the time, and to  
25 be as accurate as possible. I think it was in 1966.



1

2 Q When you were still at Tubeco?

3 A Yes.

4 Q That is when you had the fellow do the drawing?

5 A Yes.

6 Q You can't remember his name?

7 A No.

8 Q Can you tell me something else whereby we  
9 might be able to better identify him? Was he a man on  
10 the outside of Tubeco or was he an employee of Tubeco?

11 A I don't think he was -- let me see. Yes, Mr.  
12 Hopgood. The fellow that drew this up I recall was an  
13 employee of Tubeco.

14 Q Was he a draftsman?

15 A Yes.

16 Q Did he do this at your request or was it  
17 something he did for Tubeco?

18 A He did this at my request.

19 Q Did you pay him?

20 A No.

21 Q Did this happen as to other drawings as well  
22 as this one?

23 A Just these three drawings.

24 Q The three that you have put into your brochure,  
25 this Exhibit 4, is that right?

1

2 A Yes.

D

3 Q And they were done in 1966 while you were  
4 still at Tubeco?

5 A The drawings were made in 1966.

6 Q Are you saying the drawings, the reproductions  
7 of which we see here in this brochure, were made in 1966  
8 by this fellow?

9 A Yes.

10 Q How did they get to be on Crippen letterhead?

11 A What do you mean, on Crippen letterhead?

12 Q Well, the page that I have in my copy of  
13 PDX Exhibit 4 has a sort of an artistic design with  
14 Crippen Pipe Fabrication Corporation on it (indicating).

15 A Yes.

16 Q I was wondering how those drawings got to  
17 be in that context of Crippen Pipe identification.

18 A Xeroxed.

19 Q I would like you to draw further upon your recol-  
20 lection, and tell me whether this fellow, this draftsman  
21 who prepared these for you, made them from Tubeco drawings  
22 or drawings in Tubeco's possession?

23 A No.

24 Q Well then, would you tell me, please, exactly  
25 what you told him?

1

2 A What I told him?

3 Q Yes.

4 A I showed him the wire, --

5 Q Yes?

6 A -- and had him to draw it up.

7 Q This has a lot of real detail on it, if

8 I may say so.

9 A Yes.

10 Q I see fractional dimensions here, something  
11 which is 6'-6 3/16", 3'-3 9/32", and so on; lots of  
12 fractions like that.

13 Where did that sort of thing come from?

14 A This comes from trying to show the no-tangent  
15 bending that can be done with CREDIT.

16 Q And this is what you did while you were still  
17 at Tubeco?

18 A No, I didn't do this type of bending. I wasn't  
19 bending then.

20 Q No. These dimensions were entered onto  
21 this drawing as of the time that you were still at Tubeco,  
22 is that right?

23 A As best I can recall, yes.

24 Q Where did you get the dimensions from?

25 A The dimensions were really put in to show the



1  
2 advantages that are offered by CREDIT, the no-tangent  
3 in between bends.

4 Q Let me understand it right.

5 A Yes.

6 Q You put these dimensions on the drawing?

7 A Yes.

8 Q Or at least you had your friend, the draftsman,  
9 in 1966, do this, while you were still at Tubeco?

10 A Yes.

11 MR. FOLEY: Can you clarify what you mean  
12 when you say while he was employed at Tubeco?

13 Q While you were employed at Tubeco or Carl  
14 Pipe, I don't care, whatever it may have been.

15 MR. FOLEY: Yes. But when you say "at  
16 Tubeco", I want it clear as to whether the  
17 work was done at the offices of Tubeco or the plant,  
18 or at home.

19 MR. HOPGOOD: Let us have a five minute  
20 break.

21 MR. FOLEY: Sure.

22 (A short recess was taken.)

23 MR. HOPGOOD: Back on the record.

24 Q Mr. Crippen, you have been able to sort of  
25 mull this over a little bit now, haven't you?

1

2 A Yes.

3

4 Q As you know, I am interested in how these  
drawings came to be made.

5 A Yes.

6

7 Q And you said that they were done by a draftsman  
at the plant?

8 A Yes.

9

10 Q At Tubeco?

11 A Yes.

12

13 Q Have you by any chance thought of his name?

14 THE WITNESS: (Addressing Mr. Foley) Do I

15 have to answer it?

16 MR. FOLEY: Yes; I think you do.

17 A Lou Weber.

18 Q Well, did you meet with him once or twice?

19 Use your own words, and tell me what you recall of this  
20 meeting with this man.21 A Mr. Hopgood, to tell you the honest truth, I  
22 don't recall the time that was involved. I honestly don't  
23 remember.

24

25 Q Did you meet with him on more than one oc-  
casion?26 A I would say yes, I met with him on more than one  
occasion.

27

1

2 Q And this was at the plant?

3 A Oh, no, no, not at the plant; at my home.

4 Q I see. At your home?

5 A Yes.

6 Q But it was still while you were employed  
7 at Tubeco?

8 A I'm trying to recollect. I don't want to make  
9 this confusing, believe me. But realizing I left  
10 Tubeco in February of '66, I honestly -- yes, I'll say  
11 while I was still at Tubeco as best I can recall.

12 Q I would like you to tell me, if you can  
13 recall, where you got the numbers that appear in here.

14 A The numbers that appear in there were numbers that  
15 Weber and myself -- this was from a fabricated piece. The  
16 drawing here was made from a wire. It was envisioned  
17 from the fabricated piece. But the dimensions in here  
18 were not the dimensions of the fabricated piece.

19 Q I see. So that you knew what the dimensions  
20 of the fabricated piece were, and you changed them?

21 A No I didn't, no. I didn't change the dimensions  
22 of the fabricated piece. These figures were put in  
23 here really to highlight the advantages of the apparatus,  
24 what it offered to be done.

25 Q You are talking now about the patented apparatus?



1

2

25.

3

4

5

MR. LIEBERMAN: As I followed your check, that check was that 25 recipients received one or more copies, is that correct?

6

MR. PAULSON: Yes.

7

8

9

MR. LIEBERMAN: In some cases I notice as many as three or four copies going to the particular corporation.

10

MR. PAULSON: Yes.

11

MR. FOLEY: Off the record.

12

(Discussion off the record.)

13

(Mr. Paulson hands documents to Mr.

14

Lieberman.)

15

16

17

MR. LIEBERMAN: I want the record to show that you are now giving me copies of the letters to Ryan, Brooke, Peterson and Javitz.

18

19

20

21

22

23

24

25

The next group is in a file -- and I don't know where the file came from, although I would presume it came from your people -- and included in that file is the notation Advance Sales Commitments. And following that there is a list of corporations. And following in the file are letters from those corporations, which back up the statement Advance Sales Commitments, right?

1

2 the Pipe Fabricating Institute, or a member. I don't  
3 know whether he was a director or not.

4 Q When you said "member of Foster Wheeler",  
5 did you mean somebody with the Foster Wheeler organization,  
6 or a member of this institute?

7 A No. He was a plant manager for Foster Wheeler, works  
8 manager or plant manager.

9 Q What was his name?

10 A Mr. R. E. Conklin.

11 Q Can you give me the circumstances of their  
12 making this statement that you referred to here?

13 A I am afraid I can't.

14 Q It was only conversation, is that it?

15 A It was conversation, yes.

16 Q How did they know it was designed by you?

17 A Oh, this was at a time -- with Mr. Conklin -- at  
18 a time when I was at Foster Wheeler's plant in Livingston.  
19 And Mr. Conklin recalled having seen me at Carl Pipe.  
20 I'm trying to associate the reality in -- of the con-  
21 versation -- but I can't.

22 Q Had you told them that it was invented by  
23 you or devised by you?

24 A Not invented by me. They recognized me as the  
25 bender at Carl Pipe -- Mr. Conklin did -- and I was there

1  
2 for the purpose of interesting them in my patent, at  
3 Foster Wheeler's.

4 Q This was, then, something that happened after  
5 you left Tubeco?

6 A Oh, yes.

7 Q And did you then tell the Foster Wheeler man  
8 that the equipment at Tubeco had been designed by you?

9 A I couldn't say I said that.

10 Q What did you say?

11 A I don't recall the conversation. I mean, I was  
12 there to try to interest them in my patent. And Mr.  
13 Conklin remembered me and the type of work that was being  
14 done in that little shop. And he was complimenting the  
15 work.

16 Q Did his compliment have to do with the extent  
17 of the work done?

18 A Well, the extent of the work done at Tubeco, the  
19 bending at Tubeco -- at Carl Pipe; I'm sorry, at Carl  
20 Pipe.

21 Q Do you mean that Mr. Conklin made a distinction  
22 between the work done at Carl Pipe and the work done at  
23 Tubeco?

24 A No. Tubeco was not in existence as Tubeco. Today  
25 it's in Brooklyn. Carl Pipe was in existence then. You



1

2

3 Now really, the essence of my question is; who is

4 the knowledgeable expert, and what really did he say in

5 regard to the hot pipe-bending equipment at Tubeco's

6 present plant? Now, you say Carl Pipe isn't that plant

7 at all?

8 A Yes; you're right. I have had some other people say

9 it, too. I'm trying to remember who they were; speaking

10 of Tubeco now.

11 Just let me think about it.

12 Oh, yes. I have heard it by Mr. O. P. Carter of

13 M. W. Kellogg.

14 Q All right. Now, when did you hear from this

15 Mr. Carter?

16 A In '67 or '68.

17 Q This was after you were employed by Tubeco?

18 A This was after I had left Tubeco; yes.

19 Q And what did he say?

20 A Well, he made reference to Tubeco's equipment as

21 being good.

22 Q Did he say that it was designed by you?

23 A No.

24 Q Did he say it was the best in the industry?

25 A Words to that effect, yes.

Q Is there anybody that you can think of in the

1

2 industry, a knowledgeable expert, who said that about  
3 equipment was designed by you?

4 A I don't know of anybody who said equipment was  
5 designed by me.

6 Q Is there anybody you can think of who is  
7 knowledgeable in the industry, in the pipe fabricating  
8 industry, who said that "the equipment designed by Mr.  
9 Crippen was the best in the industry"?

10 MR. FOLEY: Are you talking about the exact  
11 words or the substance, or are you talking about --

12 MR. HOPGOOD: Would you please let him answer  
13 the question? He was just about to give his answer.

14 I was using the words written in his report.

15 MR. FOLEY: The question isn't clear to me.  
16 Are you quoting from the report?

17 MR. HOPGOOD: I was using the words in the  
18 report. And apparently you are trying to suggest  
19 a different answer. I object to this kind of  
20 interruption. I have been trying to be fair and  
21 patient throughout the examination.

22 MR. FOLEY: You say I am suggesting a dif-  
23 ferent answer. I didn't even hear the first answer.

24 (Addressing the reporter) Would you read  
25 the first answer to the question?

1

(Record read.)

2

3

Q Now, what is your answer to that question?

4

A The answer to that question is I did not state that anybody said that the equipment designed at Tubeco was the best in the industry.

7

Q Thank you.

8

Now, we are on page two, --

9

A Yes.

10

Q -- which has a 6/71 to it.

11

A Yes.

12

Q I direct your attention to the last paragraph on that page, really a couple of sentences from it:

13

14

"Mr. Crippen's patented apparatus represents a significant improvement over any equipment or method currently in use in the industry. All of the components and concepts embodied in this apparatus have been tested and proven of full size equipment ---"

18

19

I take it to mean "on" full size equipment.

20

A Well, it means that the concepts embodied in the patent has been used not with a patent apparatus having been made.

22

23

Q Is that the answer?

24

A Yes.

25

Q How about the components? The statement says

25



1

2 on page two, the next to the last sentence -- read it  
3 and satisfy yourself, because I want to ask a question  
4 about it.

5 A All right.

6 Q Now my question is, with regard to all of  
7 the components embodied in the apparatus having been  
8 tested and proven on full sized equipment --

9 A The components --

10 MR. POLEY: He didn't finish the question.

11 Q I want to know, what components?

12 A Well, I didn't write this; and the components, the  
13 concepts embodied in the apparatus, has been tested and  
14 proven.

15 Where were they tested and proven?

16 A They were tested and proven, some of it even at  
17 Sun Ship and --

18 Q And where else?

19 A At Tubeco.

20 Q How about the components? Where were they  
21 tested and proven?

22 A Well, I have -- actually, I have never had the  
23 some of the components.

24 Q It says all of the components.

25 A No. Well, this is a misconception here.

2 Q You mean this is a statement in error?

3 A Well, I would say -- "all of the components" -- this  
4 is a statement in error.

5 Q Have you ever called this error to the at-  
6 tention of anybody?

7 A In fact, I have never detected it.

8 Q Until this moment?

9 A Until now, yes.

10 Q We have noted on the record before our de-  
11 duction that perhaps certain of the pages in this Exhibit  
12 5 are different from the way in which they were when the  
13 Confidential Report was first issued, because we have  
14 noted this 6/71 designation appearing on certain of the  
15 pages.

16 I would like to know, Mr. Crippen, did you have a  
17 hand in the recasting of any of this?

18 A Did I have a hand in recasting any of it?

19 Q I mean as to language.

20 A As to language -- well, I don't know.

21 Q Did you see it before it issued?

22 A Maybe.

23 Q Did you see the first edition before it issued?

24 A Yes.

25 Q And you certainly approved the first edition?

2 A Yes, right.

3 Q -- at the time this came out, Exhibit 5.

4 A Yes.

5 MR. HOPGOOD: Therefore, of course, I will  
6 have to make a request on the record to be sup-  
7 plied with whatever it was that he meant to refer  
8 to.

9 THE WITNESS: Mr. Hopgood, I want you to  
10 know one thing. I'm not trying to evade answers.  
11 I'm trying to give you the answers as best I under-  
12 stand you.

13 Q And all I want is what you can tell, you know.

14 A Right, right. I may answer fast, because I really  
15 don't get the question.

16 Q I want you to get the question. And I want  
17 you to feel that you have given the right answers to the  
18 questions.

19 A Right.

20 MR. HOPGOOD: Off the record.

21 (Discussion off the record.)

22 Q I would like to ask you whether you have pro-  
23 vided any drawings for use in making the patent application  
24 which resulted in the patent.

25 A Have I provided any drawings? I provided the model.



1

2 Q Are you telling me, then, that the drawings  
3 were made from the model?

4 A The drawings were made from the model, yes.

5 Q And there were no drawings, then, other than  
6 the patent drawings?

7 A Other than the patent drawings, yes.

8 Q Were they to scale, the drawings made from  
9 the model?

10 A To scale?

11 Q Were they to scale; yes.

12 A Not that I knew of.

13 Q Now Mr. Crippen, I direct your attention to  
14 a part of the complaint in this action.

15 A Yes.

16 Q Will you have a look at your attorney's copy  
17 of it?

18 A Yes.

19 MR. FOLEY: What page are you on?

20 MR. HOPGOOD: Page 3.

21 Q Have you read it?

22 A I have read it, yes, sir.

23 Q I direct your attention to paragraph number five, --

24 A Yes, sir.

25 Q -- and I ask you whether from your knowledge

1

2 of things at Tubeco while you were at Tubeco -- and Carl  
3 Pipe -- plaintiff's established commercial technique for  
4 bending -- that is, the hot bending of pipe -- of at  
5 least six inch diameter included the step A of heating the  
6 pipe to a temperature at which it is bendable.

7 A Yes, sir.

8 Q Did they do that at Tubeco?

9 A Yes.

10 Q That was part of their regular commercial  
11 practice, wasn't it?

12 A Yes.

13 Q Now, again as to the regular commercial  
14 practice as you knew it at Tubeco and Carl Pipe, did they  
15 anchor one end of the pipe?

16 A Yes.

17 Q Still as to the commercial practice at Tubeco  
18 and Carl Pipe as you knew it, did they bend the pipe in  
19 a horizontal plane to the extent of the desired number of  
20 degrees?

21 A Did they bend the pipe in a horizontal -- yes.

22 Q Still as to your knowledge of things at Tubeco  
23 and Carl Pipe, was the radius of the die-formed bending  
24 arc equal to the radius of the bend to be made?

25 A Where is that?

1

2

Q I am referring to sub-paragraph E on page 4.

3

THE WITNESS: Will you ask that question again?

4

MR. HOPGOOD: We will have it read back.

5

(Question read.)

6 A

I can't say that it was equal to it.

7

Q Was it substantially equal to it?

8

MR. FOLEY: Would you state what you mean

9

by "substantial"?

10

MR. HOPGOOD: That is what I would like to

11

know.

12

MR. FOLEY: I object to the form of the

13

question as being indefinite until you characterize

14

what you mean by "substantial".

15

Q Was there a radius to the die which was used

16

for forming the bending arc?

17 A

Supposed to be; yes.

18

Q You made it, didn't you?

19 A

I didn't make the dies, all the dies at Tubeco.

20

Q Let us take dies that were used commercially,

21

as you remember them.

22

Was the radius of the die formed as an arc?

23 A

Yes.

24

Q And was this arc formed to accord with the

25

radius of the bend to be made?



1

2 A In many cases, no.

3 Q You say "in many cases", leaving open some  
4 question about what you mean.

5 A Well, I cannot say, at Tubeco or at Carl Pipe that  
6 all the radii was equal to the radius of the bend to be  
7 made, no.

8 Q Wasn't that true for any of the pipe made at  
9 Tubeco?

10 A I cannot say about the pipes made at Tubeco.

11 Q I mean the pipe bent at Tubeco.

12 A Yes. I can't say that.

13 Q As to the pipe bent at Carl Pipe?

14 A There might have been some, yes. But I was able to  
15 compute the difference when the radius was not equal to what  
16 it was supposed to be.

17 Q It was supposed to be bent to that radius,  
18 wasn't it?

19 A It was supposed to be, yes.

20 Q Was there an allowance of, shall we say, one  
21 to five percent, to allow for springback of the metal  
22 when you pulled it around to bend it against the forming  
23 die?

24 A No, I didn't -- I don't know what Tubeco does. I  
25 don't know what they do now.

1

2 Q We are talking about your knowledge of things  
3 at Tubeco or Carl Pipe. We are not talking about your  
4 knowledge of what they are doing now.

5 A But Mr. Hopgood, I have to clarify one thing. Are  
6 you talking about what I did or are you talking about what  
7 somebody else did?

8 Q I am not asking you what you did. All I am  
9 asking you is what you knew of what went on at Tubeco or  
10 at Carl Pipe.

11 A I did not know whether the arc of the bending die  
12 was equal to the arc of the bend to be made. I did not  
13 know that.

14 Q Now, going back to your knowledge of things  
15 at Tubeco or at Carl Pipe, was the die-formed bending arc  
16 set up to be spaced from the bending floor?

17 A Yes.

18 Q Still going back to this time of your knowledge  
19 of things at Tubeco and Carl Pipe, did the pipe being bent  
20 rest on riding supports?

21 a Yes.

22 Q Did those supports support the pipe at an  
23 elevation which was spaced from the bending floor at  
24 substantially the same distance as the bending die was  
25 spaced from the floor?

1

2 A You're saying "substantially"?

3 Q Yes.

4 A I must ask again, Mr. Hopgood. Are you referring to  
5 my work?

6 A I am talking about your knowledge while at Tubeco  
7 and at Carl Pipe.

8 A I cannot say that the pipe was supported substantially  
9 at any given height; the pipes that I did not bend.

10 Q There were supports, though, weren't there?

11 A There were supports.

12 Q There were those pipes that you marked in PDX  
13 Exhibit 12-A yesterday, right?

14 A Yes, there were.

15 Q And we called them floor pipes, right?

16 A They were floor pipes, yes, sir.

17 Q What was their purpose at Tubeco or Carl Pipe?

18 A Well, the purpose was to keep the pipe up so as to  
19 wrap the chain around the pipe, and also to keep the  
20 pipe up off of the bending block as it was bent around the  
21 former.

22 Q And it had no relation to the curvature of  
23 the forming die?

24 A No, I wouldn't say it didn't have any relation. I  
25 am not saying it was center-lined, I'm not saying that it



1  
2 was held elevated to a particular point. This I cannot  
3 say.

4 Q Isn't that the only elevation that would make  
5 any sense?

6 A I think I explained yesterday that if it were not --  
7 and in many cases it was not -- it would cause it to ride  
8 on the upper rim of this former -- of the form band; I'm  
9 sorry -- the curvature piece here (indicating). Or  
10 sometimes it would be low and ride on the bottom, and  
11 there would indentations on the pipe. So I cannot say  
12 that in some cases it was at any given point, any specific  
13 point.

14 Q Yes. But to get a good result based on what  
15 you knew at Tubeco or Carl Pipe it had to be up high  
16 enough to sort of nest in the crotch of the forming die?

17 A That would be the proper procedure to get a good,  
18 or to get the best bend that you could get, yes.

19 Q Isn't that what you were doing, or trying to  
20 do at Tubeco?

21 A That's what I was trying to do at Carl Pipe.

22 Q And did you, in fact, do it?

23 A In some cases, yes.

24 Q Thank you.

25 And they were commercial products of the company,

1

2 weren't they, that you were doing it on?

3 A Yes. I mean -- sometimes, gentlemen -- please bear  
4 with me, because there are a lot of things I really don't  
5 understand. And since you are being so specific -- I  
6 mean, I'm trying to be as specific as I can so we will  
7 leave you in no doubt as to what I mean. But really, I  
8 don't grasp things that fast. I mean, you'll have to bear  
9 with me. I'm doing the best I can.

10 And I really don't understand what you said.

11 MR. HOPGOOD: Rather than repeat the question,  
12 I will ask the reporter to read it.

13 (The pending question was read.)

14 A What do you mean by "commercial products"?

15 Q I mean products that turned out to be formed  
16 pipe which was actually sent out, billed by the company,  
17 and all that.

18 A Yes.

19 Q A product that goes out to the customer and  
20 stays as a shipped job that doesn't come back because it  
21 is a defective job.

22 A That's right.

23 Q I'm trying to learn, if I can, what it is  
24 you told your patent attorney in order to make the dis-  
25 closure so that he could go ahead with the patent application

1

2 that resulted in the patent of PDX Exhibit 3 for identi-  
3 fication.

4

MR. FOLEY: I object.

5

Q I do understand that you had a model which  
6 you let him have.

7 A

Yes, sir.

8

Q And I would like to know what you told him  
9 of your knowledge of things at Tubeco or Carl Pipe?

10

MR. LIEBERMAN: Off the record.

11

(Discussion off the record.)

12

MR. FOLEY: I advise the witness not to  
13 answer that question since it deals with his  
14 contacts with his attorney, and is subject to  
15 the attorney-client privilege.

16

Off the record.

17

(Discussion off the record.)

18

Q Do I understand correctly that you brought  
19 the model with you today?

20

MR. FOLEY: You can go ahead and answer.

21

A Yes.

22

Q I do understand that you showed the model to  
23 your patent attorney, is that right?

24

A Yes, sir.

25

Q Where else have you shown the model?



1

2

MR. FOLEY: I object to the form of the question as being too broad.

3

4

MR. HOPGOOD: All right. We will arrive at it in a different way. I will rephrase the question.

5

6 Q

Have you shown the model to anybody else besides your patent attorney?

7

8 A

Yes, sir.

9

Q Have you shown the model to more than one person besides your patent attorney?

10

11 A

Yes.

12

Q Have you any mental picture of how many people you have shown the model to besides your patent attorney?

13

And I will just give you for instances like five or ten or twenty? Can you give me some rough picture of the number of people to whom you have shown the model?

14

15

16

17 A

I would say at least twenty.

18

19

20

21

22

23

24

25

Q Well, let us go a little further. Have you shown the model to any of the people to whom the brochure of PDX Exhibit 4, or the Confidential booklet of PDX Exhibit 5 have gone?

26

27

28

29

30

31

32

33

34

35

A Yes. I showed it to Foster Wheeler, I showed it to Babcock & Wilcox Corporation, or Company. I showed it to Sun Shipbuilding & Drydock Company. I showed it to Combustion Engineering Division -- or Combustion Engineering.

36

1

2 I have also showed it to Murray Tube Works -- Murray  
3 Tube Company, Incorporated; yes.

4 Q Did you show it to Tubeco?

5 A You want me to tell you the truth? I really don't  
6 remember. I was down there to show it to Tubeco, I  
7 wanted to show it to Tubeco, but I honestly don't remember  
8 if Mr. Wesler gave me the time to show it or not.

9 Q Did you show it to the reporter for the  
10 AMM, who wrote the article that we have marked as a news  
11 release?

12 A No.

13 Q Did you show it to the ICBO people?

14 MR. FOLEY: I am going to cut short these  
15 questions on the model. I was waiting to see if  
16 there would be something relevant to the issue  
17 that we are here today on, with respect to  
18 threatened infringement or false advertising.  
19 I think we are getting far from these areas. And  
20 I think that any further questions with respect to  
21 the model I will now instruct the witness not to  
22 answer.

23 I did not object earlier, because I was  
24 waiting to see if you would lead into the areas  
25 of infringement and false advertising.

1  
2 As I understand it, as far as the complaint  
3 is concerned, the supposed misrepresentation was  
4 based upon obtaining a patent. And therefore,  
5 despite the fact that there is no infringement  
6 alleged, that is sufficient to have discovery  
7 with respect to this patent and with respect to  
8 any model that might have been used in the prepara-  
9 tion of the patent application.

10 Now, with respect to the second phase, as I  
11 understand it, it alleges that the patent was  
12 obtained by fraud; which makes it a fraudulent  
13 representation as contemplated by the enactors  
14 of the Lanham Act.

15 I don't take that position; and I don't  
16 believe the model enters into it as being relevant  
17 to those allegations as set forth in your complaint.  
18 If you want to amend your complaint --

19 MR. LIEBERMAN: I didn't suggest that.

20 May I call your attention to Paragraphs 18,  
21 19 and 20, in which you will find that we have  
22 stated that representations were made to customers,  
23 et cetera, that were misrepresentations. Okay.  
24 If you take a look at 20, you will see that it  
25 says that the techniques set forth were uniquely



2 the Judge.

3 BY MR. LIEBERMAN:

4 Q With respect to demonstrations which you  
5 gave to customers, or with respect to anything which  
6 you might have shown to customers or potential customers  
7 of Crippen, did you show them your patent?

8 A Yes.

9 Q Did you show them your model?

10 A Some of them, yes.

11 Q With respect to those to whom you showed  
12 the model, did you tell them at the time that you showed  
13 them the model that the model was representative of  
14 what was disclosed in the patent?

15 A Words to that effect. I don't know.

16 Q You said words to that effect?

17 A I don't know. I say words to that effect. I don't  
18 know whether I did this or not. But I showed the model,  
19 and I gave a copy of the patent.

20 Q For what purpose did you show the model when  
21 you showed the model?

22 A To give them a little understanding of what it  
23 was all about.

24 Q Of what what was all about?

25 A The notations.

1

2

Q The notations described in the patent?

3

A

Yes.

4

MR. FOLEY: Excuse me. Off the record.

5

(Discussion off the record.)

6

MR. FOLEY: It is my position at this time

7

that I will not produce the model, because I

8

think that the model is irrelevant, immaterial

9

and incompetent as far as the issues before the

10

Court at this time with respect to our motion.

11

MR. HOPGOOD: Is that the end of your state-

12

ment with respect to your position?

13

MR. FOLEY: Yes.

14

BY MR. HOPGOOD:

15

Q Has a photograph ever been taken of the

16

model?

17

A

Has a photograph been taken of the model?

18

Q

Yes.

19

A

I don't know of anybody taking any, no.

20

Q

I will ask you that if any has been taken

21

and if it can be found, it be produced.

22

A

Not that I know of.

23

Q

I am saying, after you have found out?

24

A

Yes, sure.

25

Q

While you were at Tubeco or at Carl Pipe

1

2 A Oh, some time back.

3

Q Do you mean while you were employed by

4

Tubeco or Carl Pipe?

5

A While I was employed by Tubeco. As a matter of

6

fact, some of the pictures that were made were made

7

into slides.

8

Q By you?

9

A Well, they weren't made into slides by me, no.

10

Q You had them made?

11

A Yes, I had them made.

12

Q Do you have them in your possession?

13

A I would hope so.

14

Q Have you used them?

15

A Yes.

16

Q When did you use them?

17

A I have used them at ICBO.

18

Q Where else?

19

A I have used them at Con Edison. Let's see. I have

20

used them at -- let me look at this (indicating). I have

21

used them at Sun Shipbuilding and Dry Dock Company.

22

Those are the places that I can recall.

23

Q Was that after you left Tubeco?

24

A Yes.

25

Q These showings?



1

2 A Yes.

3

Q Were they more or less contemporaneous with these documents that you have produced, like the brochure of Exhibit 4 and the Confidential report of Exhibit 5?

6 A (No response.)

7

Q Were these more or less at the same time as your circulation of the documents that you have identified to us, like Exhibit 4, this booklet (indicating), or Exhibit 5, the Confidential booklet?

11 A Well, I would say it was during -- sometime in 1972.

13

Q I see.

14

A Yes.

15

Q That makes it after the time of this Confidential report, which was 1971? The Confidential report gives the date of June 1971.

18

A Yes.

19

Q So it was after that that you had these slide shows?

21

A I have to think, really. Some could have been before and some after. I know there were some after, in 1972.

23

24 Q Have there been any in 1973?

25

A No.

1

2 Q How many slides are there?

3 A Oh, maybe about eight or ten.

4 Q Do they, any of them, deal with the hot  
5 pipe bending apparatus at Tubeco or at Carl Pipe?

6 A Yes. I have a slide of the picture I showed  
7 you yesterday, at Carl Pipe. And I have some of the  
8 hot bending apparatus at Tubeco; yes.

9 MR. HOPGOOD: I request the production to  
10 us of all of the slides in the slide show.

11 Did you hear that, Mr. Foley?

12 MR. PAULSON: I heard it, yes. And we will  
13 get it.

14 MR. FOLEY: We will give you copies of them.

15 MR. LIEBERMAN: Just prints of the slides,  
16 all right?

17 MR. FOLEY: Prints, yes.

18 Q Now, in connection with this slide show --  
19 first, how big is the slide 35 millimeter?

20 A Thirty-five millimeter, yes.

21 Q Is this hooked up for projection?

22 A Well, it can be.

23 Q Do you have a talking accompaniment to it?

24 A No.

25 Q No spiel?

2 A No, no spiel.

3 Q No recording?

4 A No recording.

5 Q Is there any text from which you operate in  
6 giving your slide lecture?

7 A Just talk it off.

8 Q Off the top of your head, is that it?

9 A Well, I talk it off. I wouldn't say from the top  
10 of my head, but --

11 Q Do you have any notes from which you make  
12 your speech?

13 A I don't have notes, no.

14 Q Can you tell us the substance of what you  
15 say in the slide show?

16 MR. FOLEY: May I suggest that we ought to  
17 take this up tomorrow?

18 MR. HOPGOOD: We are nearly finished, so  
19 let's do it now.

20 Q How long does the slide show last?

21 A Oh, ten minutes.

22 Q All right. What is the substance of what  
23 you say in the slide show?

24 A Well, I evaluate the difference from industry  
25 practices as to what the innovations of CREDIT provide



1

2 over the industry practices.

3

Q Is your model depicted in any of the slides?

4

A In any of them?

5

Q Yes, in any of them.

6

Yes.

7

Q Were you given permission to take these

8

pictures for the slides at Tubeco?

9

A No.

10

MR. HOPGOOD: Off the record.

11

(Discussion off the record.)

12

MR. HOPGOOD: We will adjourn the further

13

examination of Mr. Crippen pending production of

14

the things which we have asked for.

15

MR. FOLEY: All right.

16

MR. LIEBERMAN: And there were other things

17

submitted just before lunch as well, as to which

18

you were to make a decision as to the blanked

19

out portions thereof.

20

I think we might, until we get a complete  
discovery, adjourn the deposition of Mr. Stewart.

21

MR. HOPGOOD: There won't be very much more.

22

I will add that we are aware that you

23

noticed Friday for presentation to the Judge.

24

MR. FOLEY: We just did that as a matter

25

1  
2 the Carl Pipe picture. All the others being  
3 Tubeco pictures according to my understanding.

4 (Carl Pipe picture marked Plaintiff's  
5 Exhibit No. PDX-35-1 for identification, this  
6 date.)

7 (Tubeco pictures marked Plaintiff's  
8 Exhibit No. PDX-35-2 through PDX-35-35 for  
9 identification, this date.)

10 Q I ran six pictures through this group  
11 in Exhibit 35, the first one being the Carl Pipe  
12 picture.

13 A Yes.

14 Q We will call that -1 and the other five  
15 through -6.

16 A Yes.

17 Q You separated these from another group?

18 A There are 24. You can include this in there,  
19 this is just a bend configuration, bend chart that  
20 most fabricating plants have in their brochures, and  
21 what have you.

22 MR. HOPGOOD: This will be marked Exhibit 36.

23 Q These are at places other than Tubeco  
24 or Carl Pipe, is that right?

25 A They are, but let me make sure none of Tubeco's

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are in here. There are no pictures in here of  
Tubeco. They are industry pictures in general.

MR. HOPGOOD: Let's mark them anyway.  
These will be 36-1 through 36-25.

(Photographs marked Plaintiff's Exhibit  
Nos. PDX-36-1 through 36-25 for identification,  
this date.)

MR. HOPGOOD: Is that the end of the  
pictures?

MR. PAULSON: What happened to the bend  
chart, did that get numbered in this group?

MR. HOPGOOD: Yes, it was in that same  
bunch so I just put it in there.

MR. PAULSON: I do have -- Mr. Hopgood,  
I do have two other groups of pictures --

MR. LIEBERMAN: Mr. Stewart is here.

MR. PAULSON: There are three photographs  
which illustrate a model that Mr. Crippen has  
constructed of something he considers to be  
an improvement to his patent which is not dis-  
closed in the patent, and so for this reason  
we consider this to be proprietary information  
at this time. If you want to take a look at  
those, we will be happy to show them to you.



1  
2 giving you right back those photographs which  
3 are a model of his apparatus which he has not  
4 yet filed for an application on and we don't  
5 want to see them further.

6 THE WITNESS: Thank you.

7 MR. HOPGOOD: We say the same thing as to  
8 this other group, Mr. Paulson. Therefore, I  
9 return all the pictures.

10 MR. LIEBERMAN: And those are the ones  
11 that have to do with fabricating other than  
12 bending.

13 MR. PAULSON: Yes.

14 MR. HOPGOOD: Did you bring the model with  
15 you?

16 MR. PAULSON: Yes, the model is here  
17 in this black case behind me.

18 MR. HOPGOOD: All right, we will get to  
19 that. As I remember there was a group of photo-  
20 graphs, I think it is Exhibit 33 photographs,  
21 which are pictures taken at Tubeco.

22 Q Is that right?

23 A You will have to show it to me.

24 Q Yes, I want you to tell me which one it is.

25 A When referring to numbers, I cannot relate to it.

1

2 Q They are all given Exhibit 33 numbers.

3

(Witness examining photographs)

4

A These pictures were taken at Tubeco.

5

Q Exhibit 33. Then there was another  
6 group of pictures taken at Tubeco which is Exhibit 35.

7

(Witness examining photographs)

8

A Mr. Hopgood, Exhibit 35 pictures were taken  
9 at Tubeco.

10

Q My question, now that you have identified  
11 the group of Exhibit 33 and the group of 35 as both  
12 having been taken at Tubeco, why are they segregated  
13 into two different kinds of piles? Is there a basis  
14 on which you put them in different categories?

15

A Oh, yes. 35 is Tubeco's bending equipment,  
16 and 36 -- no, 33 are bends that were made, distorted  
17 bends that were made at Tubeco and bends that were  
18 made or fabricated rather than completely bend form be-  
19 cause of the limitations in bending at Tubeco.

20

Q Did you take those pictures yourself?

21

A Some of them I did.

22

Q Which ones did you take? Please identify  
23 them by number from the back of the pictures.

24

A 33-24.

25

Q You took that one?

1

2 A I took that one.

3 MR. FOLEY: Maybe it would better  
4 to say which ones you didn't take.

5 Q You said --

6 A 33-23 I did not take. 33-22 I did take, 33-22  
7 I did take. 33-21 I took. 33-20 did not take. 33-19  
8 I took. 33-18 I did not take. 33-17 I took. 33-16  
9 I took. 33-15 --

10 Q You said you took 16?

11 A I took this one.

12 Q This is the pile of ones you took, isn't  
13 it, make sure you are putting them in the right pile.

14 A Right. 33-15 I did not take. 33-14 I took.  
15 33-12 I took. 33-11 I did not take. 33-10 I took.  
16 33-9 I did not take. 33-8 I did not take.  
17 33-7 I did not take. 33-6 I took. 33-5 I took. 33-4  
18 I took. 33-3 I took. 33-2 I did not take. 33-1 I took.

19 Q I see your separation of these piles in-  
20 cludes Polaroid shots in both piles. Is this your  
21 Polaroid Camera?

22 A Well, I have a Polaroid and other fellows had  
23 Polaroids, too, yes.

24 Q Some of these are not Polaroid pictures  
25 that you did take, do you have another kind of camera



1

2 A Oh, yes.

3 Q What kind?

4 A I have a Honor.

5 Q What size?

6 A 35 millimeter.

7 Q And all these small ones then I take it  
8 were with your 35 millimeter camera, is that it,  
9 the ones you said you took?

10 A Mr. Hopgood, I really don't know what was taken  
11 with what camera. Some of these pictures were taken  
12 with a 35 millimeter from other pictures. I mean  
13 I cannot sit here and tell you which was taken with  
14 what.

15 Q At least the Polaroids are clear, they  
16 were taken with a Polaroid. Now as to these pictures  
17 which you took, did you take them while you were em-  
18 ployed at Tubeco?

19 A I did.

20 Q The others that you took are in the Exhibit  
21 35 group, aren't they?

22 A May I see them?

23 Q Yes. Did you take those?

24 A I took the 35 group, yes.

25 Q And the 35 group, as I understand it,

1

2 was intended to show apparatus at Tubeco or at Carl

3 Pipe, correct?

4 A No, that was not the intent of taking that.

5 Q Well, it is the intent of your grouping.

6 MR. FOLEY: I don't think the witness

7 said that.

8 Q Say it again, I tried to understand what

9 you said.

10 A I thought you said that the taking of these  
11 pictures were intended to show the apparatus at Tubeco.12 Q Well, let me go back a bit. I don't  
13 want you to be saying anything you don't mean to  
14 say. But you had two groups which you segregated  
15 of pictures, one was Exhibit 33 and the other is  
16 Exhibit 35 which are pictures of Tubeco?

17 A Right.

18 Q I want to know why they were segregated.  
19 You said one shows apparatus and the other shows bends?20 A Yes, it does now. But that was not the purpose  
21 of the pictures when they were taken.22 MR. PAULSON: Mr. Hopgood, perhaps I  
23 can explain. I think I did a lot of that grouping  
24 for my own help in providing you with the pictures.

25 THE WITNESS: When the pictures were taken,

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if you want me to clarify why they were taken, when the pictures were taken, they were to show the procedure of the way Tubeco was bending the pipe. It was to show the actual bending of the pipe at the time.

Q They were taken while you were at Tubeco?

A Yes, they were.

Q That's true for this other group of Exhibits 33 pictures that you took at Tubeco, isn't it?

A Yes, all that I took was taken while I was at Tubeco, yes.

Q Have you given us all the pictures you took while you were at Tubeco?

A All that I have any recollection of, yes.

Q What was the purpose of this group that we have here for Exhibit 33 that you took at Tubeco?

A What was the purpose of my taking the pictures?

Q Yes.

A I took the pictures in order to show Mr. Wesler the faulty bending that was actually going on.

Q These were at Tubeco, not at Carl Pipe?

A They were at Tubeco, not at Carl Pipe.

Q And, therefore, they were during a period



1  
2 of time when you were not running the show as far  
3 as the bending is concerned?

4 A That's right.

5 Q Did you show these to Mr. Wesler?

6 A No, I offered to. I stated in several con-  
7 versations to Mr. Wesler that I have such pictures  
8 I would like to show him.

9 Q I am sorry, Mr. Lieberman doesn't seem  
10 to understand what I thought I heard you say, but  
11 this is a group, the Exhibit 33 pictures, taken with  
12 a small camera, not the Polaroid. I understood you  
13 took those pictures?

14 A These pictures, as I explained before, some of  
15 these pictures were taken with different kinds of  
16 cameras and I took slides of those pictures with my  
17 35 millimeter camera.

18 Q Yes.

19 A And when you asked for the pictures I had the  
20 35 millimeter slides developed into pictures again so  
21 I cannot say which pictures were taken with what  
22 camera. Because some of these Polaroid shots were  
23 taken with the 35 millimeter in order to get slides  
24 from them.

25 Q But what you have in your hand right now

1

2 are pictures taken at Tubeco?

3 A Yes.

4 Q Were you at Tubeco when they were taken?

5 A I was at Tubeco when these pictures were taken  
6 because I took the pictures.

7 Q What about these other pictures that  
8 you segregated from Exhibit 33 which you did not  
9 take?

10 A Well, these pictures, I mean what are you asking  
11 me about them?

12 Q You didn't take them, you said, did you?

13 A No.

14 Q Who did take them?

15 A Specifically I cannot say. I know one fellow  
16 took some. His name was Louis Gago.

17 Q Were they taken while you were at Tubeco?

18 A Some of them were taken while I was at Tubeco.

19 Q Let's segregate them, which ones were  
20 taken while you were at Tubeco?

21 A Now this is going to be a little problem.

22 Q If you know.

23 A Okay.

24 (Witness complies)

25 A Here is one here dated March '66. I had gone

1

2 from Tubeo when this one here was taken.

3

Q That's Exhibit 33-9.

4

A This here one was taken after I left Tubeco.

5

Q That's Exhibit 33-15.

6

A This one was taken after I left Tubeco.

7

Q That's Exhibit 33-11.

8

A I don't know about this one. This one was  
9 taken while I was at Tubeco.

10

Q Exhibit 33-20 was taken while you were

11

at Tubeco?

12

A While I was at Tubeco. This one was taken after  
13 I left Tubeco. I can recall the pictures.

14

Q That's Exhibit 33-13 taken after you

15

left Tubeco?

16

A Yes. And these pictures, this picture was  
17 taken, yes, this picture was taken while I was at  
18 Tubeco.

19

Q That's Exhibit 33-18 taken while you

20

were at Tubeco?

21

A Right.

22

Q What about these, if you can remember?

23

A These I said were taken while I was at Tubeco.

24

Q Okay, that means 33-7, 33-8 and 33-2,

25

correct?



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2 A Yes.

3 Q That gives us five?

4 A Yes, those three.

5 Q And these two also? (Indicating)

6 A And this was taken while I was at Tubeco.

7 Q That's Exhibit 33-17.

8 A Now here, what had happened, this pipe here --

9 Q That's Exhibit 33-17?

10 A -- is a picture of this same pipe here. These  
11 pictures were put up in this -- this picture was taken  
12 of this picture and two more distorted pipe bend  
13 to make this.

14 Q The one you are saying was like 33-17  
15 is 33-18?

16 A Right.

17 Q Which has some typewritten markings on it?

18 A Right.

19 Q Is that because you especially mounted  
20 it for purposes of a slide?

21 A That's right.

22 Q So that 33-18 is one of your demonstration  
23 slides?

24 A That's right.

25 Q But it is all basically pictures taken

1  
2 while you were at Tubeco?

3 A Yes.

4 Q And just to recap it, the ones covering  
5 when you were at Tubeco, I will put them in the right  
6 number, in the right order, are 33-2, 7, 8, 17, 18,  
7 and 20. Will you check that?

8 A Yes.

9 Q So the ones not taken by you, and not  
10 while you were at Tubeco, come down to 4, namely  
11 33-9, 11, 13, and 15, is that right?

12 A If you say so, yes.

13 Q Well, you just made notes. We will read  
14 back what I just said.

15 A Here are some more over here that I didn't take.

16 Q But it was while you were at Tubeco?

17 A I am sorry.

18 MR. HOPGOOD: Read back what I just said.

19 (Record read back)

20 A Yes, they are the pictures.

21 Q Who gave these to you, the ones not taken  
22 by you and not taken while you were at Tubeco?

23 A These were -- may I look at the writing on  
24 the back of them. This one was given to me by Louis  
25 Gago.

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Q That's 33-15?

3

4

A Yes. 33-13 was given by Gago. 33-11 was given by Gago. 33-9 was given by Gago.

5

Q Who is Mr. Gago?

6

A Louis Gago. You just took his name.

7

Q Is he an employee of Tubeco?

8

A He was.

9

Q What part of the plant was he from?

10

A He was a welder.

11

12

13

14

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Q Now I believe you said you had some pictures that you were going to show to Mr. Wesler, you offered to show them to him. Now what of these pictures that we have been talking about did you have in mind, these pictures taken at Tubeco?

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MR. FOLEY: Can I interrupt? Off the record.

(Discussion off the record)

MR. FOLEY: I want to get something on the record. If you want to wait until later -- I mean now we have all the pictures identified.

MR. HOPGOOD: We did not show Mr. Katz certain ones Mr. Paulson gave to us, returned to you. The record in the transcript doesn't



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show what these mean.

MR. FOLEY: I would like the record  
to show --

MR. HOPGOOD: Everything we have marked.

MR. FOLEY: -- that all the exhibits of  
pictures which have been marked for identifi-  
cation were shown to Mr. Katz for his inspection.

MR. HOPGOOD: Read my question.

(Question read back)

A The pictures that were taken at Tubeco were the  
pictures -- the pictures taken at Tubeco were the pictures  
that I wanted to show Mr. Wesler.

Q Now, did you get in touch with him? Was  
this while you were at Tubeco that you wanted to show  
them to him?

A Some of them, yes.

Q How about the others, did you want to show  
them to him at the other times you tried to meet  
with Mr. Wesler that you talked about?

A That was the purpose of the meeting, was to  
show Mr. Wesler these pictures and make comparison  
of Mr. Wesler's capabilities and what I was going  
to show him that could be afforded by CREDIT, that  
was the purpose of getting with Mr. Wesler. This

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2 was one of the first things that I felt if he really  
3 knew what was going on and how it was going on, and  
4 how it could be corrected I thought he would listen.

5 Q So this was all part of your presentation  
6 to him when you were going to tell him about your  
7 patent, is that it?

8 A Well, some of this was before the patent. I  
9 didn't have the patent when I was talking to Mr.  
10 Wesler about some of these pictures.

11 Q You had the patent application, though,  
12 didn't you?

13 A I didn't have the patent application filed when  
14 I was talking to Mr. Wesler about some of these pic-  
15 tures, not even the application wasn't filed.

16 Q Well, let's get this all straight. You  
17 said there was a time you wanted to see Mr. Wesler  
18 about some of these pictures before you left Tubeco?

19 A Right.

20 Q Is that close to the time you left Tubeco?

21 A I don't recall just when all those pictures  
22 were taken, but the pictures were taken for the pur-  
23 pose of showing them to Mr. Wesler.

24 Q Well, at any rate, there was a time you  
25 tried to see Mr. Wesler about some of the pictures



1  
2 before you left Tubeco?

3 A Yes.

4 Q Then there was a time when you had a  
5 patent that you were going to show him some of these  
6 pictures?

7 A Yes.

8 Q Is that when you were going to show him  
9 as many as you had?

10 A I was going to show him all of them, plus the  
11 ones that I had gotten after I left Tubeco.

12 Q Okay. These are all Exhibit 33, 35  
13 pictures that we were talking about, pictures of  
14 Tubeco, Exhibit 33 and 35. Here is 35 and 33 which  
15 has been broken down into four groups.

16 A They are the pictures of Tubeco, they are the  
17 ones I was going to show Mr. Wesler.

18 Q So two times you tried to see Mr. Wesler  
19 about these pictures?

20 A More than two times.

21 Q At least two?

22 A At least two, yes.

23 Q There was another time you talked about  
24 when you saw Mr. Wesler when you only had a patent  
25 application going, were you going to bring along the



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pictures at that time, too?

A Every meeting that I intended to have with Mr. Wesler was for the purpose of informing Mr. Wesler what I knew about the limitations in bending and the shoddy bends that were being bent, and I figured the best way to do this was to show him the work that was actually done in his plants, and this was the purpose of my trying to contact Mr. Wesler on many occasions.

Q Including the times when you tried to tell him about your patent application and your patent?

A Each time I was going to meet with Mr. Wesler first of all I thought the best way would be to show Mr. Wesler what is being done in his plant because I didn't think he had full knowledge of what was actually going on in his plant.

Q How many times did you meet Mr. Wesler after leaving Tubeco?

A I met Mr. Wesler, one day he set up a meeting for me to come down. I don't recall the date, but I do know when I got there he said that he had some other business that was going to take him outside, he and Tony Lopez, and he said to me "Hank, I would ask you to go along to lunch with us but I have some --" I don't

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A Well, until the time I was taken off of hot bending because of the back injury that restricted my movements and what have you.

Q Now what was your position at Tubeco with respect to hot pipe bending after that point in time?

A At times I gave information on -- instruction on some bending.

Q Were you in charge of any bending?

A I was not in charge of bending.

Q Now we have here the Exhibit 33 and Exhibit 35 pictures which you said were all pictures of things at Tubeco or Carl Pipe, how are they being used or how have they been used at your place or by you since leaving Tubeco?

A They have not been used.

Q They have not been used?

A No.

Q Are any of your slides used for your lectures among these pictures that you have submitted?

A Yes.

Q For Tubeco?

A Yes.

Q Can you identify those for us?



1

2 A Well, most any of them were used at some  
3 time or another. I didn't always use -- I cannot  
4 tell you what particular slides I used for any parti-  
5 cular meeting. I would just take some slides and  
6 I would show what -- how pipes are bent and show the  
7 distortion in bends, and I would explain how CREDIT  
8 eliminates these overbent, underbent angles, flat  
9 spots in the pipe, what have you.

10 Q Would you please just tell us which ones  
11 have been used as slides?

12 A All of the pictures have been used as slides  
13 at one time or another. I cannot even sit here and say  
14 they all have been used because some slides I would  
15 show would maybe be 15 or 20 slides, some would be  
16 more, some what I have showed as little as maybe ten  
17 slides. It all depends on what the occasion and  
18 how long I had to give my presentation. And this can  
19 be very boring to try to talk to somebody about a  
20 lot of slides that -- if the time isn't right to do  
21 it. In fact I would rather not do it anyhow if the  
22 time isn't right.

23 Q When you say slides, you are talking about  
24 35 millimeter slides that are framed in cardboard?

25 A That's right.



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Q That is the kind of thing you had made from these pictures?

A That's right, that's right.

Q Were they made from all of these pictures, Exhibits 33 and 35?

A Well, I have the slides, I don't know --

Q I would like to know which ones are the slides. I think we will just have to ask your counsel to give us a tally. We have identified, put a marking on the back of every one of these pictures. We want to know which ones were slides?

A Well, the best I can do on that is show you what slides I have. Some slides might have been lost. I have moved recently. And some things have been misplaced. I cannot --

Q Perhaps the best thing then is to say if I understand you right, your best recollection is that all of these were used for slides?

A At one time or another, yes.

Q Now were these all used for slides, too? This is the Exhibit 36 group which is pictures taken other than at Tubeco?

A I don't even have to look at them. If they are here they were used as slides, yes.

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2 A Because it fitted in the size of the model  
3 that I had made more closely.

4 Q Coming back to this Mr. Gago who supplied  
5 certain pictures to you, did you ask him to take pic-  
6 tures for you?

7 A No.

8 Q How did you get these pictures then?

9 A Well, Mr. Gago was as anxious to get me a meeting  
10 with Mr. Wesler. In fact I guess he was even more  
11 so. Mr. Gago went to Mr. Jack Albert, he went to  
12 Mr. Sidney Albert, he went to Mr. Arthur Green, he  
13 went to Mr. -- the salesman, Bill Goldsmith. He  
14 even threw some hints to Mr. Wesler, to Allan. Mr.  
15 Gago being there, being one of the top welders there  
16 who did the welding on the rotator and who found many  
17 problems in welding these distorted out of square  
18 bends together, figured that with<sup>2</sup> my apparatus that he  
19 could do something for Tubeco that was not being done  
20 in Tubeco. Mr. Gago used to call me from time to time  
21 practically every week at some time to tell me what  
22 was going on in Tubeco and try to get me some kind of  
23 a meeting, or try to insist that I should call Al,  
24 or you should call somebody, Henry, it is ridiculous,  
25 it is this, it is that. This is what I had to contend



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with week after week from Mr. Gago. Because he was the welder. This is the honest fact.

Q When was Mr. Gago doing this for you?

A From the time, in fact even while I was at Tubeco he used to always talk about the problem and after I left Tubeco up until Mr. Gago left Tubeco, and that was somewhere around '71, I think.

Q Was he taking pictures for you, giving you pictures before you left Tubeco?

A Yes.

Q Was he doing this because he thought he could thus help you explain your new ideas to Mr. Wesler?

A That's right.

Q You mean the new ideas in your patent, is that it?

A The new ideas in the patented apparatus, right.

Q This is while you were still at Tubeco?

A Some of it while I was at Tubeco, that he figured if Mr. Wesler knew what was going on, he would come to me and I could set up something there to give them better bending than what they had.

Q Some of these contacts were with Mr. Gago after you left Tubeco?



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2 A Oh, yes, yes.

3 Q When I said these contacts, I am talking  
4 about Mr. Gago in his function of taking pictures,  
5 he was taking pictures for you and giving you these  
6 pictures after you left Tubeco?

7 A Yes.

8 Q As well as before you left Tubeco?

9 A Yes.

10 Q Now I think we would like to see the  
11 model.

12 MR. HOPGOOD: Off the record.

13 (Discussion off the record)

14 MR. HOPGOOD: We will mark this Exhibit 37  
15 and call it separate parts A, B and C. I will  
16 put different stickers on them.

17 THE WITNESS: They are all on the patent  
18 application.

19 MR. HOPGOOD: If you don't mind, I will  
20 mark the parts as you come up with them. This  
21 will be PDX 37 and there will be A, B and C  
22 and so forth as we go along.

23 (Model with all its parts marked Plaintiff's  
24 Exhibit No. PDX-37 for identification, this  
25 date.)

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2 A With respect to the affidavit we were talking  
3 about hot bending.

4 Q And Tubeco, you say, is one of the few  
5 leading sources of such products?

6 A Yes.

7 Q And I ask you, what was the basis for  
8 that statement?

9 A The basis was that we have those three major  
10 areas I delineated before, which seem to meet the  
11 customers' requirements.

12 Q They are facilities --

13 A Do you want me to rephrase the same thing again?

14 Q All right; yes.

15 A Wouldn't it be easier for him to read them  
16 again (referring to the reporter)?

17 Q You can rephrase it.

18 A I would prefer that he just read it again.  
19 Why must we have a conflict of statements?

20 MR. FOLEY: All right. Would you read  
21 that part of the record, please?

22 (Record read)

23 Q With respect to the first factor, what  
24 do you mean by "facilities"?

25 A May I ask if you are now directing yourself to



2 far as what he may observe with respect to your hot-  
3 bending operation?

4 A There's no restriction as far as our hot-bending  
5 operation. We have other restrictions, but not that.

6 Q Does that apply both to the process  
7 conditions as well as the apparatus you use?

8 A Yes. We're not concerned about the customer,  
9 because he is not knowledgeable in the technique.  
10 But we would be very cautious about another fabricator  
11 seeing it, because he would be aware of the technique.

12 Q In other words, you wouldn't want your  
13 competitor to come in?

14 A That's right.

15 Q Have there been any occasions where you  
16 have invited a competitor to visit your plant?

17 A I have never invited a competitor into our  
18 plant. It may be possible that they may have  
19 been brought in through sales people. But at all times  
20 we were careful as to what they would see.

21 Q When a customer comes to your plant, who  
22 normally would guide them through the plant?

23 A A salesman, an engineer or management.

24 Q If an engineer wanted to show a customer  
25 your plant would he have to get your approval first?



1  
2 he was advised that the dies were considered  
3 patentable. The statement in the affidavit  
4 was that it was considered that they may at some  
5 time have been considered patentable.

6 THE WITNESS: Can I clarify that, if I  
7 may?

8 Q Yes.

9 A I think that the customers, not being that  
10 knowledgeable in the field, just saw an overall  
11 operation that was unique to their experience. And  
12 they indicated that the operation looked unique  
13 and contained patentable features.

14 These assertions that I am making are part of  
15 the inference I got when they made the statement.

16 Q I see.

17 You say you were so advised by your  
18 customers?

19 A Yes, sir. As part of the procedure for placing  
20 large fabrication orders in our industry, it is  
21 standard practice that the customer would come to  
22 inspect the facilities and approve the facilities for  
23 the fabrication. And in the course of these usual  
24 inspections of the facilities, these remarks were  
25 made.

2 at the office?

3 A Yes.

4 Q And you cannot recall any other person  
5 at Tubeco who Mr. Crippen might have seen that day?

6 A On that Saturday?

7 Q Yes, on that Saturday.

8 A No, because I was working alone in the office,  
9 as I recall. I don't know who else may have been there  
10 at the time.

11 Q Was that the first time, as far as you  
12 can recall, that you saw Mr. Crippen after he left  
13 your company?

14 A I don't recall whether I saw him prior to this,  
15 but it was the first time in reference to him making  
16 an application for a hot-bending technique. We  
17 frequently have ex-employees drop over to see  
18 their friends, you know.

19 Q Yes. But as far as you can recall, you  
20 cannot recall a meeting with him at any time before  
21 that?

22 A No, I cannot.

23 Q Well, now, could you tell me what the  
24 substance of that meeting was?

25 A Mr. Crippen indicated that he had some new and



1  
2 revolutionary concepts in hot-bending, and he would  
3 like to sell them to us.

4 And I said at that time that since he  
5 had been working in our plant, and he knew of all the  
6 techniques that we had, if he had something new it  
7 may be something that we were evolving ourselves; and  
8 I didn't want the implication that we were taking  
9 anyof his ideas. And I insisted that he wait until  
10 after he had a patent before he came to us again.

11 Q I see. Well, now, I believe in your  
12 affidavit you talk about a second meeting with Mr.  
13 Crippen.

14 A Correct.

15 Q And I believe you asked him how much he  
16 wanted as far as money was concerned; is that right?

17 A Let's look at the affidavit.

18 MR. LIEBERMAN: Yes.

19 MR. HOPGOOD: That is on Page 4.

20 MR. LIEBERMAN: Paragraph 8?

21 MR. FOLEY: Yes.

22 THE WITNESS: That's Paragraph 9, I guess.

23 MR. FOLEY: Paragraph 9, right. That  
24 refers to the second meeting.

25 THE WITNESS: Yes. I stand by the statement



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2 A Was I aware of the Crippen patent?

3 Q Right.

4 A I was aware only of what he told me, that he  
5 was seeking a patent for a new hot-bending system.  
6 And that is what I was aware of.

7 Q As far as you can recall when was the  
8 first time you saw the Crippen patent?

9 A It was in the second meeting.

10 Q At the second meeting?

11 A Yes.

12 Q All right. Now, apparently some time  
13 during the course of the second meeting you asked  
14 Mr. Crippen how much Mr. Crippen was asking you for  
15 this patent; correct?

16 A Yes.

17 Q Well, now, my question is -- I should  
18 first ask you this:

19 Did you ask Mr. Crippen that question  
20 before you had seen the patent drawings or after you  
21 had seen the patent drawings at that meeting?

22 A Before I saw the patent drawings.

23 Q Now to get back to my earlier question:

24 Why did you ask Mr. Crippen how much he  
25 wanted for his patent when you didn't know what the

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2 unless it was within our budget.

3

Q Were you having some problems with respect  
4 to your Tubeco operations that would lead you to be  
5 interested in a new or improved process?

6

A I'm in a technological field, and I am always  
7 interested in a new process.

8

Q And is that the reason why you asked Mr.  
9 Crippen how much he was asking for this patent?

10

A Correct.

11

Q Incidentally, when you asked Mr. Crippen  
12 how much he wanted for his patent, had you had any  
13 knowledge or information as to what Mr. Crippen  
14 at least alleged were the advantages of his process  
15 and apparatus?

16

A No.

17

Q Well, now, can you pin down more  
18 accurately when the second meeting took place?

19

A The second meeting was after he had acquired the  
20 patent. I assume it was shortly afterward. I would  
21 guess it to be within a year or less after he acquired  
22 this patent.

23

Q Would you have any records or corres-  
24 pondence or diaries or something that would establish  
25 and tie down that date as to when you had that meeting?

2 recall when you were first aware that Mr. Crippen  
3 had a pending patent application on a hot-bending  
4 technique?

5 A The Saturday he came into my office.

6 Q And that was the first time?

7 A To the best of my memory, yes.

8 Q And I believe that at that meeting you  
9 testified that the patent would issue within a few  
10 months; is that correct?

11 A No, I did not. I had no idea when. He  
12 stated that he was acquiring a patent; and I don't  
13 recall when.

14 MR. LIEBERMAN: Off the record.

15 (Discussion off the record)

16 A I'm sorry. Okay, I did say that.

17 MR. FOLEY: I ask the reporter to mark  
18 as Wesler Exhibit 6 for identification a  
19 letter dated March 6, 1968, to Mr. Wesler  
20 from Mr. Crippen.

&& 21 (Letter referred to marked Wesler  
22 Exhibit 6 for identification, as of this  
23 date)

24 Q I hand you Wesler Exhibit 6, Mr. Wesler.  
25 Are you familiar with it (handing)?



2 A I have read it.

3 Q Are you familiar with the letter?

4 A Vaguely, yes. I slightly remember it now as I  
5 have it in front of me.

6 Q Well, then, I ask you now, as far as you  
7 can recall, when you were first aware that a patent  
8 application was filed by Mr. Crippen on a hot-bending  
9 procedure?

10 A Again, I cannot pin down the date specifically.  
11 And I have to elaborate on this, because you have to  
12 realize that the hot-bending process requires quite  
13 a bit of technical expertise on the question of  
14 stresses and strains in the various members.

15 I did not at that time, nor do I now feel  
16 that he had the expertise to involve anything new  
17 that I would take seriously.

18 Q That may be your opinion, but would you  
19 answer the question.

20 A I am giving you my opinion. Therefore, I did  
21 not take the letter seriously. I dismissed it without  
22 reading it fully. And that may be why it does not  
23 stay in my memory.

24 Q You dismissed it without reading it  
25 fully; is that what you said?

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2 Subsequently, I received this letter  
3 where he seemed to be pressing the issue (indicating).  
4 At that point I immediately turned the letter over  
5 to my attorney and discussed with him the form of  
6 reply. And we did discuss the form of reply, which  
7 is your Exhibit No. 7, the paper that you have.

8 Q Well, then, is my understanding correct,  
9 that this letter of March 20, 1968 was after the first  
10 meeting referred to in your affidavit?

11 A To the best of my recollection.

12 Q As far as you can recall?

13 A Yes.

14 Q Would you read Paragraph 12 of your  
15 affidavit, please, Mr. Wesler.

16 A All right.

17 Q Now, in subparagraph (c) of Paragraph  
18 12, you state that, "it was plain that the patent  
19 had issued on Mr. Crippen's understatement of the  
20 prior art..."

21 Do you see that?

22 A Yes, I do.

23 Q Well, now, what prior art are you referring  
24 to in that paragraph?

25 A In the beginning of the paragraph I referred to

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in the affidavit. I am trying to find out in what respects --

MR. LIEBERMAN: What statements?

MR. FOLEY: The drawing. In what respects the drawing bore a close resemblance. I believe he said in all respects, and --

THE WITNESS: I'm sorry. In all respect of figure 1. And that is as far as I got into it, because I think I indicated previously that once I saw figure 1, which embodied all the concepts that we knew and either abandoned or used, I then left the meeting in disgust.

Q You didn't read figures 2 or 3?

A No, because the comprehensive view in figure 1 purports to show the whole concept, as I understand it; and the rest is detailed drawings of the concept.

Q I see. So am I correct that in your statement in your affidavit, at the second meeting you read figure 1, and you got so annoyed looking at the figure 1 of the drawings that you left in disgust?

MR. LIEBERMAN: No, that is not the testimony.

MR. FOLEY: Will you let the witness answer the question?

MR. LIEBERMAN: No, because the question mis-



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trying to ascertain the apparatus you had at Tubeco, and what items or what elements of the apparatus shown in the drawing you did not have at Tubeco. That is the only question.

A The appearance of the dies are identical to those we have at Tubeco.

MR. LIEBERMAN: I think if you asked the question, were the edges of your bending dies elliptical at Tubeco, and this witness is capable of answering it, I would permit it.

MR. FOLEY: I am not trying to get any interpretation of claims.

Q Mr. Wesler, did you ever read the patent specification?

A I'm sorry; I don't understand what you mean by patent specification. Do you mean the whole patent?

Q Yes. It is all one patent.

A No, I never did. I heard the description of it, I looked at the illustrations. Our technical man, Mr. Katz, read it thoroughly; and he pointed out the appropriate parts that he wanted me to look at.

Q Am I correct, then, as far as whether or not Tubeco had this specific apparatus which we are talking about, the elliptical shape, you have not read the

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2 A I would assume that the photograph was part  
3 of a brochure put out shortly after we entered the  
4 new building. The present company name is Tubeco,  
5 and this bears the name Tubeco. So that this would  
6 probably be when we went into the new building which  
7 should be maybe thirteen years ago approximately.

8 Q Do you know who suggested a system where  
9 had electrical controls to individually open the  
10 furnace doors? Do you know who made that suggestion?

11 A Yes. We had a furnace built for us by a furnace  
12 manufacturer, and it was their design. When we moved  
13 into the new premises we made one ourselves, based  
14 on that same equipment. But they were the ones who  
15 originally built it for us.

16 Q So it was the furnace company who designed  
17 the furnace?

18 A It was the furnace that built it in conjunction  
19 with our specifications.

20 Q Do you know if they built it for any other  
21 company?

22 A I have no idea.

23 Q Do you know if they built it --

24 MR. HOPGOOD: What possible relevance can  
25 all of this have to the issues before this court.

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2 the first meeting and the second meeting.

3 A Yes.

4 Q With respect to the first meeting, I believe  
5 you testified that as far as you can recall, although  
6 you are not sure about it, but as far as you can best  
7 recall, the first meeting was prior to when you  
8 received the letter of March 6, 1968 from Mr. Crippen.  
9 That letter has been identified as Wesler Exhibit 6  
10 for identification.

11 Am I correct, that that was your testimony?

12 A Yes.

13 Q And then there was a second meeting, which  
14 is referred to in your affidavit, and that was the  
15 meeting upon which we have already had some testimony,  
16 where you looked, at least, at figure 1 of the drawing,  
17 and you and Mr. Crippen had some discussion.

18 Now Mr. Wesler, can you recall any meeting  
19 with Mr. Crippen between these two meetings where a  
20 Mr. Lopez was present, Mr. Tony Lopez?

21 A Do you mean a third meeting?

22 Q Yes, a third meeting. And let's say any  
23 meeting where Mr. Lopez was present, at which time  
24 you met with Mr. Crippen.

25 A I don't remember one.



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Q Do you know who Mr. Tony Lopez is?

A Yes, I do.

Q Is he employed by Tubeco?

A Yes.

Q Is he still with Tubeco?

A Yes, he is. Not in this country, though, I mean.

Q At any time had he been employed by Tubeco where he was employed in this country, do you know: when he was working in this country?

A In the last several years he has been more overseas than here; but he has been coming in on a regular basis.

Q I believe that yesterday you testified that after you received the letter of March 6, 1968, Exhibit 6, and before you sent your letter to Mr. Crippen, Exhibit 7, of March 20, 1968, you consulted an attorney, is that correct?

A That is correct.

Q Mr. Lake?

A Yes.

Q Why did you consult an attorney?

A I have answered that question I thought. And if you would be kind enough to refer back to that testimony, I think the reason was given.

01 2 Q Do you know if anybody at Tubeco -- and  
3 again, you may not know, and if you don't just say,  
4 I don't know -- had the knowledge that Mr. Crippen  
5 had a patent?

6 A No, I don't know.

7 Q Who set up the meeting -- I am talking  
8 about the second meeting -- where the patent -- at  
9 least some drawings of the patent -- were shown?

10 A I assume my secretary did with Mr. Crippen.

11 MR. LIEBERMAN: Mr. Foley, it is not our  
12 position that the meeting in fact took place  
13 after the patent issued. We are not sure.  
14 The only position we are taking is that he  
15 thinks it did because he was furnished a  
16 document that looked like one, but we have  
17 taken no posture that that is the fact.

18 MR. FOLEY: I understand that. I have no  
19 problem with respect to that.

20 Q What was the purpose of the meeting, if  
21 you can recall?

22 A For the reason I have given previously, that  
23 Mr. Crippen indicated he had a new and improved method  
24 of hot-bending and we were interested in seeing what  
25 it was.

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Q Well now, you earlier testified that you consulted your attorney for the reason that Mr. Crippen wanted to have further discussions with you concerning this process.

MR. HOPGOOD: He said more than that.

MR. POLEY: All right.

Q Is that correct?

A Mr. Crippen had indicated that he had a feature or a system that he wanted to sell to us or equipment that he wished to sell to us. I wanted to be very careful not to discuss it further with him or look at any papers that he had until he had obtained his patent.

Q What caused you, then, to agree to the meeting, which is the second meeting?

A Because Mr. Crippen said he had a patent.

Q So that Mr. Crippen did say he had the patent and then you felt it was all right because you were told that Mr. Crippen had a patent and you were then willing to see him?

A Yes.

Q I am not sure whether yesterday we had some discussion as to what was meant by a tangent bend. Can you recall if we had discussion with regard to that



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2 to the effect that the meeting took place  
3 after that as well.

4 MR. FOLEY: Right.

5 A It lasted about a half hour.

6 Q Was this half hour period devoted both  
7 to your looking at the drawings and Mr. Crippen's  
8 discussion with respect to the drawings?

9 A Well, the total time was approximately a half  
10 an hour, and since Mr. Crippen was a long-time  
11 employee, I am sure we had some pleasantries first,  
12 and then we had a discussion and a review of the  
13 drawing.

14 Q All within a half hour --

15 A Yes.

16 Q -- as far as you recall?

17 A Yes.

18 Q Am I correct, that Mr. Crippen did offer  
19 at the meeting to tell you about what his improvements  
20 were, but that you didn't want to listen to him?

21 A Mr. Crippen indicated that he had improvements  
22 other than what was patented. And for the reasons  
23 that we give in our letter, I said that I didn't feel  
24 that I wanted to see anything other than what was  
25 patented.

1  
2 Q Well now, did you personally ascertain  
3 at the time of the meeting, or was there any discussion,  
4 as to what was patented, apart from just the drawings?

5 MR. LIEBERMAN: Apart from the drawings  
6 and the discussion.

7 A Yes, and the discussion.

8 Q Well, what was the discussion, in substance?

9 A The discussion was a description of the equipment  
10 shown in the drawings.

11 Q Do you mean that during that half-hour  
12 period Mr. Crippen described each and every item  
13 shown in the drawings?

14 A We asked Mr. Crippen to describe his patent.

15 Q Right.

16 A And he did; and looking at the figure and  
17 listening to his discussion, I saw nothing at all  
18 unique; and I just couldn't understand what he was  
19 trying to sell me.

20 Q Do you recall whether or not Mr. Crippen  
21 had a model with him?

22 A I don't know whether he had one with him. It  
23 wasn't shown to me if he did.

24 Q Can you recall whether or not he offered  
25 to show you by some means the operation of his process,

1  
2 meeting?

3 A I put it out of my mind after that second  
4 meeting. I thought that was the end of the matter.  
5 I thought that Mr. Crippen might be trying to collect  
6 some money from me, and I thought that when I told  
7 him I wasn't interested in paying anything, that was  
8 the end of the matter.

9 Q Even though at that second meeting you  
10 had never seen the claims of the patent, as I under-  
11 stand it?

12 A No, I had not, but I don't see why that has any  
13 significance. I saw a drawing of the equipment and  
14 I heard the description, and I knew it was obviously  
15 our equipment.

16 Q Did you have any apprehension as to  
17 whether Mr. Crippen might at some time use this  
18 patent against you?

19 MR. LIEBERMAN: Would you define the word  
20 "you"?

21 MR. FOLEY: Strike that.

22 Q I mean against your interest?

23 A I had no apprehensions because I thought that  
24 was the end of the matter. I thought that he wanted  
25 to make a collection of some money and he had not



1  
2 been successful in that area, and that that would  
3 be the end of it.

4 Q Between that period of time and when you  
5 actually brought the lawsuit, did Mr. Crippen make  
6 any threats to you which caused you to change that  
7 thought? You said the matter was at rest after the  
8 second meeting, but subsequently, something must have  
9 happened which later resulted in your filing this  
10 lawsuit.

11 A To the best of my memory I had no further  
12 contact with Mr. Crippen after that meeting.

13 Q Then what did Mr. Crippen do between  
14 the second meeting and when you actually filed a  
15 lawsuit to cause you to file a lawsuit against  
16 Mr. Crippen if you had no further contact with him?

17 A A couple of matters. One matter was that I  
18 was approached by a representative of a bank who said  
19 that he would like to come in and discuss pipe  
20 fabrication, specifically hot-bending, with me.

21 I said, "In what connection?"

22 And he said, well, that he had a pipe fabricator  
23 who was applying for a loan and he wanted a little  
24 more information about what is available in the  
25 industry.

2

We had an appointment. He came in and he said,

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"I should tell you really why I am here." And he

4

said, "It is because a Mr. Crippen has applied for a

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loan, and that Mr. Crippen said that he had a bending

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process that we were using under his patent and that

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we were paying him a fee to use it."

8

I said, "That is absolutely not the case."

9

At that point I again put the matter out of my

10

mind. Then, subsequently, I had a couple of calls

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from customers of ours saying that they have heard

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that we were using a patent owned by Mr. Crippen

13

and that they were concerned about what this may

14

involve them in.

15

Q Right.

16

A Whether they were protected against possible

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claims for that reason.

18

Q Right. Can you recall the name of the

19

banker or the man who wanted to see you about this

20

application for a loan, what his name was?

21

A I cannot recall the name. I can recall a

22

description of the man.

23

Q All right. Would you?

24

A But I don't recall the bank. As I say, again,

25

it may have been naively, but I put the matter out

1  
2 of my mind at that point.

3 Q Would there be any notes or any records  
4 which might help us to track down this man?

5 A No, sir. As I indicated, this was prior to  
6 any contact we had from customers of ours.

7 Q Yes, I know. I am not talking about the  
8 customers now.

9 A At that point, as I told you, I intended to take  
10 no action on the matter because Mr. Crippen's business  
11 is his own business, and if he was going for a loan,  
12 I saw no reason for me to get involved in it in any  
13 way.

14 As a matter of fact, the representative of the  
15 bank asked to go down on the floor with me and see  
16 the bending method. He did, and I showed it to him.  
17 And he said, "But this is the same thing that is in  
18 the patent."

19 I said, "Yes." And I gave him permission to  
20 speak to employees on the floor to ascertain that it  
21 was an old technique that we had used for many years,  
22 which he did.

23 He said, "Well, that's enough for me," and he  
24 left.

25 Q But you cannot recall who that gentleman



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was or what bank he was with?

3

A There was no reason for me to keep this information.

4

Q When this gentleman told you that

5

Mr. Crippen told him that he had a patent which Tubecó

6

was infringing or was using, or something --

7

A He didn't say infringe. He said that we were

8

paying him to use it.

9

Q And that was not correct?

10

A That was absolutely not correct.

11

Q Did you have any concern when you heard

12

that?

13

A Why would I, really? In what way could it hurt

14

me?

15

Q Would you describe the gentleman for us

16

as best you can? I think it is important that we

17

try to locate the gentleman.

18

MR. LIEBERMAN: If you deem it is

19

important to locate him, then on that basis

20

alone it is important; but Mr. Wesler has no

21

recollection of the man's name or the bank.

22

Perhaps Mr. Crippen could list those banks

23

which he talked to and Mr. Wesler would try to

24

identify from recollection on hearing the names,

25

that that is the name of the bank.

1  
2           What we are saying is that Mr. Wesler  
3 does not have a recollection, although it may  
4 be that Mr. Crippen does; so if you give us  
5 the name we can perhaps put it to rest; hopefully  
6 we might be able to put it to rest.

7           MR. FOLEY: That is a point, but I think  
8 Mr. Wesler said that he could describe the  
9 gentleman, that he remembers his face but not  
10 his name.

11           THE WITNESS: I remember him because he  
12 was an attractive young man, and usually you  
13 expect older, more conservative men to come from  
14 a bank, and this was a young man, slender,  
15 medium height. I would guess him to be in his  
16 mid-thirties, well-dressed, a Negro, a rather  
17 athletic looking young man.

18           Q       You made some statement that as far as  
19 you can recall, he said, "Well, that is enough for me,"  
20 or something like that?

21           A       Yes, which to me indicated that he was putting  
22 the matter to rest there also.

23           Q       Do you mean that Mr. Crippen would not  
24 get a loan?

25           A       I have no idea. He said, that is all he needed,

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Wesler

372-A

and that was enough for him.

Q Well, was the statement made by him a  
factor as far as your lack of concern?

(Continued next page.)



1

2 A I have already indicated I don't know why I  
3 should have been concerned about this matter.

4 Q You also mentioned a customer. When was that,  
5 around the same period of time?

6 A No, quite a while afterwards.

7 Q Can you give us a time period?

8 A And I also have to add a third factor in this that  
9 did cause me concern, and that was that I saw publi-  
10 cations indicating that Mr. Crippen had set up a shop  
11 of his own, with an obvious reference to Tubeco, saying  
12 he was its leading competitor in the area. And also,  
13 the implication now became even stronger that we were  
14 using a technique and equipment and processes that were  
15 invented by Mr. Crippen. And this would certainly  
16 frighten our customers.

17 Q That was a third factor?

18 A Yes.

19 Q What was the first one again?

20 A The first factor, as I told you, was the banker.  
21 You asked me what happened after the second meeting?

22 Q That's right.

23 A I told you that the first factor was a visit from  
24 a banker.

25 Q Right.

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A And the second --

Q I understand that your testimony with respect to that was that it did not result in any concern?

A No. I indicated that as part of an accumulative picture.

Q But that factor caused you no concern?

A No. It was a sequence of events. You asked what sequence of events led up to this. That was one of the sequences of events.

Q Okay. Now let us get to the second factor with the customers.

A Yes.

Q Can you recall who the customers were?

A I would not like to give you their names for obvious reasons, because Mr. Crippen is intending to compete in the same field we are in.

Q You said, I believe, that customers indicated to you that Mr. Crippen indicated to them that Tubeco was using his patent, is that correct?

A I don't know whether they got this information from Mr. Crippen or not. They just called us, concerned whether they were protected as far as possible liability. But more importantly as far as delivery; that what would happen if he removed the process from us and they had

1  
2 substantial orders on the books with us on which they  
3 would not be able to get delivery?

4 Q So that they called you and conveyed to you  
5 that they were aware of the Crippen patent?

6 A Yes.

7 Q And because of their awareness, they wanted to  
8 know whether or not perhaps they would be in jeopardy?

9 A Yes.

10 Q Is that a fair statement?

11 A Yes, whether they were in jeopardy and also whether  
12 delivery of their job was in jeopardy; which was really  
13 the main area of their concern.

14 Q But as far as you know, this was not because  
15 of any activities of Mr. Crippen?

16 A I have no idea of where they got the information  
17 except -- excuse me -- except that they said that they  
18 were approached by Mr. Crippen's company.

19 Whether the approach was for business or was as  
20 a threat against them continuing to give us business I  
21 have no idea.

22 Q I think this area is highly relevant to the  
23 motion, because it has to do with, say, possible threats  
24 by representatives of Mr. Crippen's company against  
25 your customers. It is highly relevant to the issue of



1  
2 Q Have you made any changes, first, in your  
3 hot pipe bending apparatus or method since 1968?

4 A I previously told you that we are making  
5 custom made products, and each product, or each new  
6 range of product, requires a slight modification  
7 in the equipment that you are using.

8 The basic principles, however, have remained  
9 the same throughout our history.

10 Q All right. Since 1968 have you ever  
11 contemplated making a change in your hot pipe bending  
12 apparatus or method, but did not do so because of  
13 the existence of the Crippen patent?

14 A No.

15 Q Has any customer of Tubeco ever advised  
16 you that it cannot purchase or use Tubeco's bent  
17 pipe without payment of a royalty to Crippen?

18 A No. Our customers have all been with us for a  
19 long time and they have faith in our word as we have  
20 in theirs. When we assured them that they did not  
21 have to be concerned, that we would stand behind the  
22 product and the delivery promises that we gave them,  
23 they had taken that assurance.

24 Also, we may have other customers that did not  
25 even come to us because of this matter, which we may

2 was not in the first few months of our operation.

3 MR. FOLEY: All right. I have no  
4 further questions.

5 MR. LIEBERMAN: Let's take a two-minute  
6 break and we will see if we have any questions.

7 MR. FOLEY: All right.

8 (A short recess was taken.)

9 MR. LIEBERMAN: I have just a few  
10 questions to ask.

11 MR. FOLEY: All right.

12 MR. LIEBERMAN: Before I begin, I have  
13 an offer to make. I understand that you have,  
14 if not a concern, a desire to find out the  
15 name of the person in the bank to whom  
16 Mr. Wesler spoke at his plant, as he testified.

17 The offer I make now is, Mr. Crippen  
18 being present, he can give names to you and  
19 you can suggest those names to the witness and  
20 see whether or not any of those refresh his  
21 recollection.

22 I think that would be the best approach  
23 before you finish your part of the examination,  
24 toward the determination of that fact.

25 MR. FOLEY: All right.

(Addressing Mr. Crippen.) Do you have any knowledge on that?

MR. CRIPPEN: No. I don't have names here but I can get them later.

MR. LIEBERMAN: Perhaps that can be done, the furnishing of names, along with the interrogatories? We will respond on that basis rather than having Mr. Wesler come back again, as to identifying the person.

MR. FOLEY: That is fine with me.

MR. LIEBERMAN: All right. Then let me ask some questions.

BY MR. LIEBERMAN:

Q Did there come a time when any customers called you and the Crippen patent came up?

A I testified to that previously, yes.

Q Would you please state for the record the substance of those conversations?

(Continued next page.)



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around the shop and everything about an invention

3

by Mr. Crippen.

4

Q What was the hearsay?

5

A The hearsay was that Mr. Crippen had invented something that could revolutionize the pipe industry.

6

7

Q Can you identify some of the people who told you about this invention?

8

9

A Oh, no.

10

Q You can't identify anybody?

11

A No, no.

12

Q Did Mr. Crippen ever tell you about his invention?

13

14

A Yes.

15

Q Can you tell me when?

16

A I would say as -- I would say -- well, invention. I can't say this was an invention. Mr. Crippen had told me about an idea. Now, when it was disclosed as an idea, it wasn't an invention and I don't know if it was an invention now.

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But my relationship with Mr. Crippen goes back some time and we many times have talked about piping and we talked about -- we talk about piping and various methods of bending. So I can't say -- I don't think it's right for me to say that I know about -- had we

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recalled making some of the drawing.

3

A A drawing similar to this.

4

MR. LIEBERMAN: No, similar.

5

A I believe I said similar.

6

Q Could you tell us about the similar

7

drawing, particularly when did you make it?

8

A I made a drawing maybe seven or eight years ago  
similiar to this, about seven or eight years ago.

9

10

Q Can you recall whether or not Mr.

11

Crippen was a Tubeco employee at the time that you  
made this drawing?

12

13

A I believe he was.

14

Q Can you tell me where you made this

15

drawing?

16

A At my house.

17

Q Can you tell us what the drawing was

18

based on?

19

A Well --

20

MR. HOPGOOD: If you recall

21

A I recall Mr. Crippen having a piece of wire and  
bending it to certain forms.

22

Q Did he have any other drawings that he

23

showed to you at this time?

24

A I don't recall seeing any other drawings.

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Q Do you recall where you obtained the dimensions that are shown on these drawings?

A Mr. Crippen gave me this information.

Q Are these drawings of a type that you would have prepared during your time as a draftsman at Tubeco?

A That I would have prepared?

Q Yes.

A No.

Q Based on your knowledge as a draftsman at Tubeco and as a project engineer, do you know if Tubeco has the capability of forming a pipe such as shown on Webber Exhibit 4 by hot pipe bending without cutting and welding?

MR. LIEBERMAN: That question is objected to as already asked and answered and you have inquired into his responses and we instruct him not to answer.

Q Mr. Webber, I am handing you Webber Exhibit 3 which has been previously marked. Can you tell me the relationship of Webber Exhibit 3 to Webber Exhibit 2?

A As I recall, this is -- oh, yes, this is a section of the layout here, two sections (indicating).



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A It was a very short meeting.

MR. HOPGOOD: I take it you are only asking the part that Mr. Webber was in?

MR. FOLEY: Yes.

MR. COSTIGAN: I am only asking on his knowledge.

A It was a -- timewise, I don't know but it was a very short meeting.

Q Can you give us any time frame reference of what you mean by a short meeting?

A Maybe less than a half hour.

Q Do you recall who was the first one to leave the meeting?

A I believe Mr. Wesler was the first one to leave the meeting.

Q At the meeting, do you recall if Mr. Crippen threatened Mr. Wesler or Tubeco with a lawsuit for infringing his patent?

A I don't recall that.

Q Referring back again to your affidavit, Paragraph 5, could you tell us the basis for your impression at how closely the drawings were to the Tubeco hot pipe bending equipment known to you?

A The drawings -- the die -- the method looked like

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of what Mr. Crippen stated at that meeting?

A Well, to the effect that this was an improvement on the bending -- hot bending.

Q Do you recall if he went into any of the details of the features that constituted this improvement?

A When I came in, I think the discussion may have been over because there wasn't -- too much discussion other than looking at the drawing -- my looking at the drawings and -- looking at the drawings and some banter back and forth between Mr. Crippen and Allan Wesler, and Lyber chimed in.

Q But I take it you were there to hear Mr. Wesler's vocal reaction to the effect that Crippen was asking Tubeco to pay him for its own process?

A Something about -- Tubeco's own process, definitely; there was that statement on Allan's part and his impatience.

Q Do you recall Mr. Crippen stating that he had improvements on the Tubeco process?

A That's what he had made a statement, that it was an improvement.

Q And he was trying to get Tubeco to see just what those improvements were and if they liked

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Q Do you recall during the time that you attended the meeting that Mr. Crippen made any statement to the effect that Tubeco was infringing his patent?

A I don't recollect anything like that.

Q Has he ever told you that, to your recollection?

A No.

Q All right.

A Not that I can think of.

Q Has anyone at Tubeco ever stated to you that Mr. Crippen had accused Tubeco to infringing his patent?

A I have no recollection.

Q Do you recall if at the time you were in attendance at the meeting, there was any discussion at all by Mr. Crippen as to the claims of his patent or infringement of his patent?

A I have no recollection.

Q I believe you previously testified that you do recall Mr. Crippen speaking in terms of his patented invention being an improvement over the Tubeco practices?

MR. LIEBERMAN: The question is what



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are you referring to the desired radius of bend?

A No, it's referring to the customer specifications for the geometry, or in the case of a spool drawing, of the geometry of the particular spool drawing.

Q Oh, I see. And that work point represents the intersection of the neutral axis of the terminal straight portion of the pipe?

A That is correct.

Q So if I mark on the vertical center line, what could I call that?

MR. HOPGOOD: Wait a minute. This is a planned view. What do you mean by a vertical center line?

MR. PAULSON: On the paper that we have in front of me, I have one center line that goes vertically up and down the paper.

Q What did you call that, sir?

A I don't quite understand what you mean. What did I call this particular thing? I called it the center line.

Q I would put parentheses "(neutral axis)".

A All right.

Q Then do I also have another center line? Did you intend to show this center line at the upper

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2 whether there was -- what compensation -- I don't know  
3 whether the word compensation was used -- but what it  
4 was. And the agreement between Mr. Crippen and Wesler  
5 was that Mr. Wesler has always been fair to him and that  
6 would be worked out.

7 Now, I believe those were the -- words -- the  
8 specific words, as I recall, Mr. Crippen used was,  
9 "Al, you have always been fair with me and we will  
10 work that out."

11 Q Then, did there come a time when you  
12 looked at the drawings?

13 A Yes.

14 Q You got into the specifics?

15 A Right, then Mr. Crippen produced these drawings.  
16 And when we looked at them, we sort of looked at each  
17 other and --

18 Q "We" is now who?

19 A Mr. Wesler, Mr. Green, myself and --

20 Q And Mr. Weber?

21 A I don't know whether he also looked at each other  
22 but I know that I looked at Mr. Wesler and he looked  
23 at me, and then as I recall, he said something like,  
24 "Hank, are you trying to peddle us our own method?"  
25 And Mr. Crippen said no, he has something different.

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2 Mr. Wesler was in the room I would say about half a  
3 minute longer. And then he just stormed out of there.  
4 And --

5 Q Go ahead.

6 A And we were left sort of in a shocked silence  
7 for a while.

8 Q Yes?

9 A And as he was walking out, he said that -- he  
10 asked that I and Mr. Green and Mr. Weber look at the  
11 drawings.

12 Q That was as Mr. Wesler walked out?

13 A As he was leaving the room, and Mr. Crippen  
14 said, no, he didn't want us to see it and he wants  
15 Mr. Wesler to be there when they are shown. And he  
16 picked up the drawings and left.

17 Q I see. So after Mr. Wesler left, the  
18 meeting terminated fairly immediately?

19 A I would say abruptly.

20 Q And there was no real further discussion  
21 between yourself, Green --

22 A There was --

23 Q -- Weber and Katz?

24 A There was a very short discussion. It may have  
25 been still while Mr. Wesler was present. I remember



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2 examination of drawings?

3 A Well, remember, we were -- it was advertised to  
4 us that there was a brand new method which would  
5 permit us to bend with zero tangents and no planes  
6 which would eliminate wrinkles, which would create  
7 all kinds of things that have not been dreamed possible.

8 So this really was of no particular significance.

9 It was a method of measuring --

10 MR. HOPGOOD: Referring to Figures 2 and

11 3.

12 A Figures 2 and 3, a method of measuring an angle.  
13 At the time, it wasn't stressed but it was only later  
14 that it assumed some importance, but it had nothing  
15 to do with measuring. To me, it was not important  
16 whether I used a K & E rule or a Lovekin rule. It  
17 was unimportant. It made no difference of what type of  
18 rule that I used for measuring.

19 We were looking primarily for those parts of  
20 the claim which pertained to solving some of the  
21 problems which have existed in the field.

22 Q When you say "claim" here, you do not  
23 refer to the claims of the patent but the claim of  
24 Mr. Crippen as to the --

25 A Right, his calls to me.

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2 meeting?

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A The only thing that I recall being said was something to the effect that he has other things that he is either working on or can show us. I don't remember exactly, but that this wasn't pictures -- that he showed us were not the complete thing. Whether he offered or not, I don't know, because -- as I say, Mr. Wesler ended this whole thing very abruptly.

10

Q Do you recall if Mr. Crippen stated at that meeting that Tubeco was infringing his patent?

12

A No, I can't recall those words.

13

Q Has he ever told you that at that meeting or subsequently thereto or prior to that meeting?

15

A No.

16

Q Do you recall if there was any discussion at all during that meeting attended by Mr. Wesler and the other gentlemen as to the claims of Mr. Crippen's patent?

20

A Can you repeat that again?

21

MR. LIEBERMAN: Yes. Repeat that question again.

22

(The question was read.)

23

MR. HOPGOOD: We are now talking of patent claims?

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MR. PAULSON: Yes, we are.

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A No.

4

Q Mr. Katz, you have just previously

5

testified and you have also stated in Paragraph 4 of

6

your affidavit that Mr. Crippen had claimed that his

7

invention --

8

MR. HOPGOOD: Wait a minute. Let's find

9

Paragraph 4.

10

MR. PAULSON: I'm in the approximate

11

middle of that paragraph.

12

Q (Continuing) That Mr. Crippen had

13

claimed that his invention would enable Tubeco to

14

make multiple compound bends with zero tangent between

15

successive bends.

16

Was it your understanding as of the close of

17

the meeting that we have just been talking about that

18

Mr. Crippen's patent would not enable such compound

19

bends to be made?

20

A Well, I pointed out to him the difficulty in

21

doing this and recalled to him the time that when we

22

used a similar setup where we had a problem with the

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clamp digging into the surface of the pipe and leaving

24

permanent marks that had to be reworked.

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Q You are referring now to the clamp of



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Mr. Foley.

MR. LIEBERMAN: The one more question that you said before has grown into at least ten or fifteen. Where does it end?

MR. HOPGOOD: It's like the bear's tail. You won't let go of it.

MR. PAULSON: I have no further questions at this time.

EXAMINATION BY

MR. LIEBERMAN:

Q On the apparatus which is shown at the bottom of Page 6, and by that apparatus, I'm indicating the dies, okay --

MR. HOPGOOD: In your affidavit.

Q In your affidavit, why didn't you use the measurement suggested by Mr. Paulson of taking diameter and measuring somewhere along the midpoint of that diameter when measuring these dies?

A The initial reason, as I explained, was that it was hard to get to. However, I also felt that this measurement would be meaningless because throughout the years of using a die, the space -- the opening changes. And the lip -- the portion of the lip at the 480° does tend to move away. Therefore, we -- since I was trying

2 to find which dies were made with a 180° circumference  
3 curvature, the only thing that I could measure was the  
4 actual circumference which would not have changed  
5 through the years.

6 Q I noted in your testimony that the forming  
7 dies used at Tubeco do not have the elliptical arc  
8 at both ends, but you testified that they only have  
9 them at one end. Why is that?

10 MR. LIEBERMAN (Continuing): I believe  
11 his testimony was in the photograph that he  
12 looked at, he saw the --

13 Q (Continuing) Did Tubeco follow the  
14 practice of making that elliptical curve at both ends?  
15 And if not, why not?

16 MR. HOPGOOD: He marked it up.

17 A No, we did use elliptical cuts on both ends.

18 Q Yes?

19 A In one case, it was to insert pipe.

20 Q Yes?

21 A To ease the insertion of the pipe. In the other  
22 case, it was to prevent sharp corners from denting the  
23 pipe during bending.

24 Q Do you insert pipe from either direction  
25 at Tubeco?

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

TUBECO, INC.,

Plaintiff,

-against-

CRIPPEN PIPE FABRICATION CORPORATION  
and HENRY O. CRIPPIN,

Defendants.

73 C 203

MEMORANDUM  
AND  
ORDER

APPEARANCES:

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By JOHN D. FOLEY, ESQ.,  
ROBERT E. PAULSON, ESQ., and  
JAMES V. COSTIGAN, ESQ.  
(NELSON LITTELL, JR., ESQ.,  
of Counsel)

NEAHER, District Judge.

Plaintiff ("Tubeco") brought this action pursuant to 28 U.S.C. §§2201, 2202, seeking a declaratory judgment which would determine that defendants' Patent No. 3,456,468 (1) is invalid, unenforceable, and not infringed by Tubeco or its customers, (2) has been used in unfair



competition with Tubeco, and (3) has been used as a false description or representation, and a false designation of origin of goods and services in violation of the Lanham Act, 15 U.S.C. §1125(a).<sup>1</sup> There being no diversity of citizenship between the parties, subject matter jurisdiction is allegedly based on 28 U.S.C. §§1331(a), 1338(a) and (b), and 15 U.S.C. §1125(a).

The case is now before the court on defendants' (hereinafter "Crippen") motions to dismiss the complaint pursuant to Rule 12(b)(1) and (6), F.R.Civ.P. The grounds urged are that subject matter jurisdiction is lacking because there is no justiciable controversy between the parties regarding the patent in question; and, alternatively, no claim is stated upon which relief can be granted. Extensive briefs, affidavits, exhibits and depositions have been submitted in support of and in opposition to the motions. The court has carefully reviewed these and concludes for the reasons which follow that the motion to dismiss the complaint should be granted.

#### FACTS

These facts appear not to be in material dispute. Tubeco is a New York corporation having its principal

place of business in Brooklyn. For at least 24 years it has been engaged in the business of pipe fabrication, specializing among other things in the precision custom bending of steel pipe larger than six inches in diameter for use in industrial installations such as chemical and power plants, refineries and the like. Hot pipe bending, as it is called, is essentially a process of heating pipe and bending it into desired shapes around the curvature face of an arced forming die. Tubeco's customer clientele includes well-known large corporations and it regards itself as a major national pipe fabricator and distributor of materials for fabrication as well as "one of the primary sources for the world's requirements of large size pipe bends."<sup>2</sup> Although describing its pipe bending equipment as "unique", see n. 2 supra, Tubeco has never obtained a patent on its apparatus or methods.

Defendant Henry O. Crippen began his training and experience in the art of hot pipe bending while employed by the Sun Shipbuilding and Drydock Corporation during the period 1942-1946. In 1954 he was employed by Tubeco's predecessor, where he was in charge of all hot pipe bending operations and claims to have "[t]ested out

during the course of his work most of the principles and concepts later incorporated into his invention",<sup>3</sup> described in the patent hereinafter mentioned. Crippen remained in Tubeco's employ until January 1966, during which period he admittedly "had knowledge of all the equipment used, and all of the processes practiced, by Tubeco, Inc. in its pipe bending and fabrication operations."<sup>4</sup>

After leaving Tubeco, Crippen became self-employed. In March 1967 he filed an application in the United States Patent Office for a patent on a hot pipe bending apparatus and process he claimed was his own invention. On July 22, 1969 United States Patent No. 3,456,468 was issued to Crippen on the apparatus and method described.<sup>5</sup>

While his patent application was still pending, Crippen approached Tubeco about using his alleged innovation. By letter of March 6, 1968, he informed Tubeco of his invention and offered it to Tubeco for its use, admittedly with the expectation of being paid if the offer were accepted. Tubeco responded by letter dated March 20, 1968, declining to permit any further disclosure or discussion of the matter unless an agreement was entered into



assuring that Tubeco would be "the sole judges of the novelty and worth of the idea, and that any payment to you would be entirely voluntary on our part."<sup>6</sup>

On or about August 13, 1970, after the patent had issued, Crippen succeeded in arranging a meeting with Tubeco officers and employees at which he explained the patented process in detail for the first time and exhibited drawings which form part of the patent involved. Tubeco's president, Allan B. Wesler, after viewing these, concluded from Crippen's presentation that he was attempting to "sell us our own process" and told him so.<sup>7</sup> Wesler then left the meeting, which ended shortly thereafter without result for Crippen.

There apparently were no further communications between Crippen and Tubeco, except for the two Tubeco letters mentioned below. At some point, Tubeco obtained a copy of the patent, examined it, and concluded it covered processes Tubeco had either used for many years before March 28, 1967, the date of application, or had earlier tried and discarded. On June 3, 1971, Tubeco wrote Crippen stating it considered the patent invalid and that Tubeco "will continue to use all of the procedures which

it presently is using and has used in the past."<sup>8</sup> The letter by its terms called for no response from Crippen and none was forthcoming.

Tubeco's next letter to Crippen — written some eighteen months later — demanded a response. That letter, annexed as Exhibit A to the complaint, is dated January 17, 1973, shortly prior to the institution of this action. After informing Crippen that Tubeco considered his patent to have been fraudulently obtained, his claim of inventorship false, and his use of the patent "unfair competition", the letter demanded "that you disclaim your patent forthwith." When Crippen did not respond, this action was begun.

Tubeco's earlier notice and eventual ultimatum to Crippen were obviously a response to news of his further efforts to exploit the patent after the unfruitful meeting at Tubeco. A month or so after that meeting and on September 18, 1970, Crippen Pipe Fabrication Corporation, predecessor of the present co-defendant, was organized in New York.<sup>9</sup> Initially Crippen had explored the possibility of licensing his patented method to other companies engaged in industrial pipe fabrication. Unsuccessful in that effort, he decided to form his own enterprise and

enter the heavy industrial pipe bending and fabrication industry in which Tubeco was a principal competitor.<sup>10</sup>

In pursuit of that goal Crippen conducted a campaign of telephone calls, letter writing, and dissemination of brochures and reports directed not only to potential customers for pipe fabrication work but also to banks, insurance companies and other sources of the financing he required. The brochures and reports, which bear dates of November 1970 and June 1971, make reference to Tubeco and other prior employment in describing Crippen's experience and knowledge in the industry and also assert that he designed Tubeco's present equipment, which "represents his early efforts to devise an improved pipe bending apparatus."<sup>11</sup> The claim was also made that "Crippen's patented apparatus represents a significant improvement over any equipment or method currently in use" and that "[a]ll of the components and concepts embodied . . . have been tested and proven of [sic] full-size equipment."<sup>12</sup> The June 1971 brochure included several pipe bend drawings, which Crippen acknowledged were made for him by a Tubeco draftsman just prior to his leaving Tubeco's employ in 1966.<sup>13</sup>



Crippen succeeded in launching his enterprise on October 31, 1972. On that date Crippen Pipe signed a lease for manufacturing buildings and facilities at the Brooklyn Navy Yard, having obtained substantial financing from a banking and investment consortium and firm sales commitments from a number of major industrial corporations.<sup>14</sup> The event received local news publicity which came to Tubeco's attention. In mid-February 1973, just as Crippen's enterprise was getting under way,<sup>15</sup> this action was commenced.

#### DISCUSSION

Although it is Crippen's motion which calls into question the court's subject matter jurisdiction, it is Tubeco's burden to demonstrate that this is a case involving a federal question, or the patent laws or a cognizable claim under the Lanham Act. McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936). The Declaratory Judgment Act, 28 U.S.C. §§2201, 2202, does not of itself confer subject matter jurisdiction but only a remedy where such jurisdiction independently exists. Sachs v. Cluett, Peabody & Co., 91 F. Supp. 37 (S.D.N.Y. 1950). There being no diversity of citizenship between

the parties and no apparent federal question apart from the patent laws and the Lanham Act, subject matter jurisdiction must rest upon the existence of either an actual patent controversy or a cognizable claim under the Lanham Act.

#### Patent Controversy

Tubeco's first alleged cause of action mingles two separate claims: (a) a claim of patent invalidity under 35 U.S.C. §§102, 103, and (b) a claim of unfair competition under 28 U.S.C. §1338(b) based upon Crippen's alleged misuse of the patent. The latter is, of course, a claim wholly dependent for jurisdictional purposes upon the substantiality of the related patent invalidity claim.

The configuration of the patent claim has changed in important respects since defendants filed their motion to dismiss. Tubeco has abandoned its original allegations that Crippen directly or indirectly, expressly or impliedly — or even vicariously — threatened Tubeco or its customers with claims that "tribute" must be paid or infringement suits would follow. Exhaustive discovery by deposition and inspection has produced only repeated

disclaimers by Crippen in the most unequivocal terms that  
(1) Crippen's patent has been infringed by Tubeco's  
methods of pipe bending; (2) Crippen has threatened or  
authorized anyone to threaten Tubeco with infringement; or  
(3) Crippen has accused or threatened any customer of  
Tubeco with infringement or suit. Indeed, the parties  
have stipulated for purposes of this motion that Tubeco

"shall not rely upon any such alleged conversations between plaintiff and its customers as evidence of plaintiff's apprehension that it or its customers would be sued for infringement of the Crippen patent, or as evidence that plaintiff or its customers would suffer loss of business or other economic harm as a result of the Crippen patent; plaintiff shall not rely upon any stated customer's apprehension that it would be sued for infringement of the Crippen patent as a basis for plaintiff instituting this lawsuit; and plaintiff shall not rely on the alleged fact that such conversations took place . . . ."16

As Judge Frankel was moved to comment in a somewhat similar situation, "if plaintiff's concern arose only from its own prospective liability in a suit against itself by the present defendant, the motion to dismiss would have to be granted. For defendant's repeated and unambiguous disclaimers in support of the motion would surely protect plaintiff in the unlikely event of an attempt to



retract them at some future time." Wallace & Tiernan, Inc. v. General Electric Company, 291 F. Supp. 217, 220 (S.D.N.Y. 1968). Here, Crippen's disclaimers and the parties' stipulation would also seem to place the case beyond the periphery of "actual controversy."

What then is left of the patent claim? As far as the court can observe, Tubeco's claim reduces itself essentially to these admitted or asserted elements:

(1) Crippen, as a former employee, had acquired detailed knowledge of Tubeco's pipe-bending techniques and took with him, when he left, some photographs and drawings (admitted); (2) Tubeco's established but unpatented commercial techniques are substantially identical to those described in the patent, indicating Crippen's failure to fully disclose the prior art to the Patent Office (asserted); (3) Crippen has made the patent the cornerstone of his new business and has in fact called on some of Tubeco's customers, advising them of the patent and seeking orders in competition with Tubeco (admitted); and (4) Tubeco provides its customers with save-harmless assurances against liability for claims of patent infringement (admitted). To these may be added Tubeco's own

complaint allegation (par. 13) that Crippen's patent claims are not infringed by Tubeco's manufacture or sale of its hot-bent pipe or machines, nor by its customers who use Tubeco hot-pipe bending services.

There is no precise test for determining the existence of an actual patent controversy. "The difference between definite, concrete and substantial controversies which are justiciable, and hypothetical, abstract, or academic ones which are not justiciable, is one of degree, to be determined on a case by case basis."

Muller v. Olin Mathieson Chemical Corporation, 404 F.2d 501, 504 (2 Cir. 1968). Some rules have developed, however, which aid the process of recognition. A plaintiff need not be charged with infringement or threatened with an infringement suit, either directly or indirectly. Id. Indeed, even a disclaimer by the defendant patentee that such a charge will never be made against the plaintiff does not obviate an actual controversy if the defendant's patent conduct vis-a-vis licensees, who are also plaintiff's customers, concretely threatens plaintiff's business. Wallace & Tiernan, Inc. v. General Electric Company, supra, at 221. And more recently it has been

suggested that "any lingering possibility of an infringement charge is sufficient to support the finding of an actual controversy so long as the plaintiff can demonstrate some actual harm to its business." Blessings Corporation v. Altman, 373 F. Supp. 802, 806 (S.D.N.Y. 1974) (emphasis supplied).

For purposes of this case, however, a more useful touchstone for determining whether an actual controversy exists is the "reasonable apprehension" formulation found in Japan Gas Lighter Association v. Ronson Corporation, 257 F. Supp. 219 (D.N.J. 1966). As the court there expressed it,

"an action must be based on the plaintiff's well grounded fear that should he continue or commence the activity in question, he faces an infringement suit or the damaging threat of one to himself and his customers. The touchstone is a reasonable apprehension. . . . some concrete indication that the defendant patentee claims the plaintiff's activity infringes his patent, and also that he will act affirmatively to enforce the protection which he claims.

"On the one hand, neither academic interest nor cautious speculation will suffice. The mere existence of the [defendant's] patent is not a cloud on title enabling any apprehensive manufacturer to remove it by suit. . . . The plaintiff's fearful conjecture that at some future time the defendant



may initiate infringement proceedings will not support the suit." 257 F. Supp. at 237 (citations omitted; emphasis in original).

Tubeco's president avers he "authorized the bringing of this action to foreclose any possible suits by Crippen against either Tubeco or its customers and to foreclose any threats against customers."<sup>17</sup> A searching examination of the extensive record reveals not the slightest support for such an apprehension. As previously noted, "fearful conjecture" as to future infringement proceedings does not create a present controversy.

Nor does the former employer-employee relationship between Tubeco and Crippen, or the asserted identity between the patented invention and Tubeco's process, or the subsequent contacts between the parties — even when viewed together — constitute the type of historical relationship which evinces the reality of the asserted controversy. There is no reasonable basis in the record for any suggestion of adverse interest or difference between the parties — that is, not until Tubeco itself sought to place a chip on Crippen's shoulder and knock it off.

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Tubeco conceded that Crippen made no threats.

The testimony and documentation relating to Crippen's prior contacts with Tubeco suggest no more than a logical and friendly approach by a former employee to a former employer whom he wished to interest in what he thought to be cost-saving improvements in the employer's methods. That he did so with the expectation of payment, if the ideas were accepted, is not a basis for concluding in retrospect that litigation was to be feared if they were not.

Crippen's approach was at most the offer of a patent license, not an invitation to a patent contest which would warrant declaratory relief. See Alamo Refining Co. v. Shell Development Co., 99 F. Supp. 790 (D. Del. 1951).

Tubeco's claim is patently a contention that the invention embodied in the Crippen patent was stolen from Tubeco, that fraud was perpetrated in obtaining its issuance, and that misrepresentations were made in Crippen's attempts to exploit it. This accounts for the detailed exploration in the record of Crippen's knowledge of Tubeco's processes and apparatus, his obtaining of photographs and drawings even after he left Tubeco, and the extensive review of correspondence, brochures, reports

and contacts with companies whom Crippen sought to interest as prospective licensees or potential customers for pipe bending services after Tubeco turned him down. It also explains the detailed analysis of the patent in comparison with Tubeco's processes. There may or may not be merit in such a claim, see 2 Callman, Unfair Competition, Trademarks and Monopolies §§52.2, 54.2, 54.2(a) and (b) (3d ed. 1968), but it is not one which may be litigated here.

To the extent that fraud on the Patent Office in the procurement of the patent is claimed, Tubeco has no standing to sue at all. Only the United States is authorized to maintain a proceeding to obtain cancellation of a patent obtained from it by fraud. United States v. American Bell Telephone Co., 128 U.S. 315 (1888). See also, Eckert v. Braun, 155 F.2d 517 (7 Cir. 1946); Howard v. Archer, 115 F.2d 342 (9 Cir. 1940); Mirachi v. Porter, 355 F. Supp. 330 (D. Mass. 1973); Sachs v. Cluett, Peabody & Co., supra.

To the extent that Tubeco asserts any rights in the patented invention,<sup>19</sup> the gravamen of the claim would be breach of the contract of employment. Diversity of



citizenship, lacking here, would be required to prosecute such a claim in a federal court. See, e.g., Jamesbury Corporation v. Worcester Valve Company, 443 F.2d 205 (1 Cir. 1971). That would also be the case if the claim is construed as a charge of unfair competition. See n. 19 supra.

In sum, Tubeco has wholly failed to satisfy its burden of showing a reasonable apprehension that the Crippen patent or its use poses a concrete threat of harm to Tubeco or its customers. Indeed, the convincing evidence is to the contrary. Tubeco, as one of approximately six leading sources of hot bent pipe in the United States,<sup>20</sup> has been in that business for upwards of 24 years.<sup>21</sup> Using wholly unpatented processes, it has successfully serviced the needs of a national clientele of sophisticated industrial corporations which are allowed to view its operations without restriction and, indeed, must approve the facilities before placing pipe fabrication orders.<sup>22</sup> Tubeco alleges that neither it nor its customers infringe the Crippen patent and Crippen agrees that Tubeco's present processing methods and equipment do not infringe the patent. The asserted patent controversy is wholly hypo-

thetical and speculative and not justiciable. Tubeco's first cause of action must therefore be dismissed for lack of jurisdiction over the subject matter.

Lanham Act Claim

Tubeco's second cause of action seeks to invoke federal jurisdiction on the basis of alleged violations by Crippen of the prohibitions contained in the Lanham Act, 15 U.S.C. §1125.<sup>23</sup> In substance, Tubeco alleges that Crippen sought to exploit his patent in interstate commerce with knowledge that Tubeco was the true developer of the process and apparatus embodied therein, and did so with accompanying photo slides and drawings derived from Tubeco, and using a model which visually illustrated the nature of the patented process. These acts, it is contended, are within the spirit and scope of the Lanham Act and constitute "a false and material description or representation" in the solicitation and sales of goods and/or services in interstate commerce. Tubeco also alleges that the use of the patent falsely suggests exclusivity and is therefore "a false designation of origin" within the meaning of the Act.

Crippen maintains that Tubeco's allegations

simply do not set forth the particular kind of unfair competitive activity at which the Lanham Act is directed. In order to state a claim under the Act, Crippen argues, §1125 requires the use of a false designation of origin, or a false description or representation in advertising goods or services and acts causing them to enter commerce. Neither element, says Crippen, is present here. There can be no "falsity" about the patent; its existence is a fact and by law it must be presumed valid until its invalidity is established by a party contesting it, 35 U.S.C. §282, and the Lanham Act does not provide a jurisdictional basis for such a contest. Moreover, Crippen argues, up to the time of the filing of the complaint, it is undeniable that no goods relating to the patent had either been manufactured or shipped in interstate commerce.

Viewing the Lanham Act claim in light of the probative facts upon which Tubeco relies, the second cause of action is clearly beyond the purview of the Act. Whether or not the patent describes Tubeco's unpatented pipe bending apparatus and process in whole or in part, it is a presumptively valid patent issued to Crippen. In no way is the patent so identified with Tubeco or its



products as to create a false impression in the trade that Crippen is now the exclusive source or origin of hot pipe bending services previously supplied by Tubeco. Indeed, as already noted, Tubeco claims its processes do not infringe the patent and Crippen agrees, a consensus suggestive of difference rather than identity between their respective processes. Crippen's communications or negotiations regarding the patent with prospective licensees, sources of financing, or prospective customers for pipe bending services, as reflected in the record, are in no sense the false advertising at which the Lanham Act was aimed. To paraphrase Judge Friendly's comment in an analogous situation, "[s]ection 43(a) [§1125(a)] is intended to reach false advertising violations", not false patent claims. See La Societe Anonyme des Parfums Le Galion v. Jean Patou, Inc., 495 F.2d 1265, 1270 n. 6 (2 Cir. 1974) (claim that defendant "falsely represented that it [was] possessed of the right [under its allegedly invalid trademark registration] to prevent the importation into the United States of the plaintiff's perfumes" held not within §1125(a)).

Even though the Lanham Act supports a broad view of misrepresentations within its reach, it is clearly

directed only against the "false representation of goods or services in interstate commerce." 1 Callman, Unfair Competition, Trademarks and Monopolies, §18.2(b)(2) at 621 (3d ed. 1967). The brochures, reports, photos, drawings and model relied on by Tubeco are neither misrepresentations nor "goods" within the meaning of the Act, even applying the liberal reading found in some of the cases cited by Tubeco.<sup>24</sup>

The assorted photos of pipe-bending dies or other apparatus found in the record are clearly not assimilable to "catalogs" containing photographs, descriptions or listings of articles being offered for sale as was the case in N. S. Meyer, Inc. v. Ira Green, Inc., 326 F. Supp. 338, 340 (S.D.N.Y. 1971), and American Optical Company v. Rayex Corporation, 291 F. Supp. 502, 504 (S.D.N.Y. 1967). Neither Tubeco nor Crippen sell the apparatus or equipment by means of which hot pipe bending is accomplished. For the same reason, the model of the apparatus described in Crippen's patent cannot be placed in the same category as advertising for simulated mink fabric, stock certificates, advertising surveys, or a signal light at a trade show. The model was itself not illustrative of the



article or service being offered for sale. And finally the three drawings in the Crippen brochure<sup>25</sup> — admittedly drawn by a Tubeco draftsman — merely illustrate multiple pipe bends of varying shapes which it was claimed could be accomplished by the Crippen method without undesirable welds and in less time than by conventional equipment. Again, no article was represented as an item or service for sale.

The "goods or services" here involved is not bent pipe, not a patent or the method by which the ultimate product is turned out. It is undeniable that prior to the filing of this action Crippen had made no sales of goods or services in interstate (or even intrastate) commerce involving the practice of any process embodied in the patent. There has thus been no actual misuse of any "distinguishing characteristic" of Tubeco's assertedly unique processes or products. Cf. Geisel v. Poynter Products, Inc., 283 F. Supp. 261, 267 (S.D.N.Y. 1968), and cases therein cited. And for the same reason there has been no satisfaction of the essential Lanham Act requirement that "the goods upon which the false designation appears" enter into interstate commerce. Blazon, Inc. v.



DeLuxe Game Corp., 268 F. Supp. 416, 428-29 (S.D.N.Y. 1965).

The actual or potential customers for hot bent pipe are admittedly large industrial users, certainly as sophisticated in their purchasing procedures as the advertising buyers in Glenn v. Advertising Publications, Inc., 251 F. Supp. 889 (S.D.N.Y. 1966). The brochures, reports, photographs, drawings and model relating to a process for hot pipe bending, relied on as false representations, to use the words of Judge McLean, "do not add up to the kind of misrepresentation which I believe the Lanham Act was intended to cover." See id. at 904. Tubeco's second cause of action therefore fails to state a claim for relief.

Defendants' motion to dismiss the complaint for lack of subject matter jurisdiction over the first cause of action and failure to state a cognizable claim under the Lanham Act in the second cause of action is accordingly granted in all respects.

SO ORDERED.

The Clerk of the Court is directed to enter judgment in favor of the defendants and against the

plaintiff dismissing the complaint.

/s/ EDWARD R. NEAHER  
U. S. D. J.

Dated: Brooklyn, New York  
October 21, 1975

F O O T N O T E S

- <sup>1</sup> Plaintiff also seeks an accounting of damages attributable to the alleged acts of unfair competition and violation of the Lanham Act. Compl., p. 8.
- <sup>2</sup> See Tubeco brochure, Def. Exh. D, Def. Reply to Pl. Opposition, etc.
- <sup>3</sup> See Pl. Exh. PDX-5, Pl. Exhs. Appended To Memo., etc.
- <sup>4</sup> Affidavit of Henry O. Crippen (hereinafter "Aff. Crippen") dated May 8, 1973, par. 17.
- <sup>5</sup> Crippen assigned the patent on October 31, 1972 to the co-defendant, a Delaware corporation, of which he is president and a director.
- <sup>6</sup> Exh. F, Def. Reply to Pl. Opposition, etc.
- <sup>7</sup> Affidavit of Allan B. Wesler (hereinafter "Aff. Wesler") dated July 25, 1973, par. 11.
- <sup>8</sup> Aff. Wesler, Exh. PDX-18.
- <sup>9</sup> The New York corporation was merged into the present co-defendant, a Delaware corporation, on July 12, 1972. The principal place of business of both corporations was and is in Brooklyn, N.Y. Aff. Crippen, par. 2.
- <sup>10</sup> As one of 21 companies listed by the industry's trade association, the Pipe Fabricating Institute. See Exh. PDX-5 dated June 1971, at p. 1, Pl. Exhs. Appended to Memo., etc.



- 11 Exhs. PDX-5 at p. 1 and PDX-28 at p. 1, Exhs. Appended to Memo., etc.
- 12 Exhs. PDX-5 and 28, supra, at p. 2.
- 13 Crippen Dep., pp. 236-47, Pl. Exhs. Appended to Memo., etc. Crippen also testified that some of the slides he used in personal demonstrations to prospects, using a model of his patented apparatus, were derived from photographs of Tubeco's bending equipment and of distorted bands, which he and another employee took both before and after Crippen left Tubeco. Id. at pp. 318-19, 328, 332, 354-64, 382-84.
- 14 PDX-2, Pl. Exhs. Appended to Memo., etc.
- 15 See PDX-10, Pl. Exhs. Appended to Memo., etc., a news report on Crippen's progress which appeared in the AMM (American Metal Market) issue of February 13, 1973.
- 16 See Stipulation and Order approved by the court March 15, 1974.
- 17 Aff. Wesler, par. 15.
- 18 Pl. Memo. in Opposition, etc., pp. 10-11.
- 19 This would certainly appear to be the thrust of Tubeco's claim as reflected in the statement of its president that "it was plain to me that his [Crippen's] new business was being founded on a misrepresentation of ownership as to the patented subject matter." Aff. Wesler, supra, par. 14.
- 20 Wesler Dep. Tr. 30-31.

21 Pl. Memo. in Opposition, etc., p. 4.

22 Wesler Dep. Tr. 70-71, 105.

23 The Lanham Act provision relied on reads:

"§1125. False designations of origin and false descriptions forbidden

"(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation."

24 See Mutation Mink Breeders Ass'n v. Lou Nierenberg Corp., 23 F.R.D. 155 (S.D.N.Y. 1959); Midwest Packaging Materials Co. v. Midwest Packaging Corp., 312 F. Supp. 134 (S.D. Iowa 1970); Glenn v. Advertising Publications, Inc., 251 F. Supp. 889 (S.D.N.Y. 1966); Crossbow, Inc. v. Glovemakers, Inc., 265 F. Supp. 202 (N.D. Ill. 1967).

25 See Pl. Exh. PDX-4, Pl. Exhs. Appended to Memo., etc.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X	
TUBECO, INC.,	:
	:
Plaintiff,	:
	:
v.	:
	:
CRIPPEN PIPE FABRICATION CORPORATION	:
and HENRY O. CRIPPEN,	:
	:
Defendants.	:
-----X	

NOTICE OF APPEAL

Notice is hereby given that Tubeco, Inc., plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum and Order entered in this action on the 21st day of October, 1975, dismissing the complaint.

HOPGOOD, CALIMAFDE, KALIL,  
BLAUSTEIN & LIEBERMAN

By 

Arthur M. Lieberman

Attorneys for Plaintiff  
60 East 42nd Street  
New York, New York 10017  
(212) 986-2480

Dated: New York, New York  
November 11, 1975



HOPGOOD

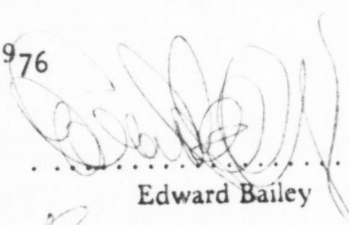
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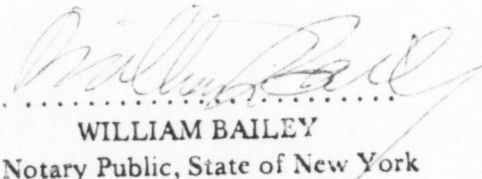
STATE OF NEW YORK.  
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 3 day of May, 1976 at No. 345 Park Avenue, NYC deponent served the within Appendix upon Morgan, Finnegan, Pine, Foley & Lee, Esqs. the Appellee herein, by delivering a true copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,  
this 3 day of May

1976

  
.....  
Edward Bailey

  
.....  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 4C-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1977

2557A

